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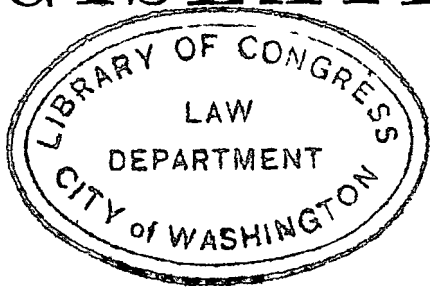
TERRITORY OF NEVADA,

PASSED AT THE

FIRST REGULAR SESSION

OF THE

LEGISLATIVE ASSEMBLY,



BEGUN

THE FIRST DAY OF OCTOBER AND ENDED ON THE TWENTY-NINTH DAY
OF NOVEMBER, 1861, AT CARSON CITY.

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1862.

L. C. copy 2

LAW

CERTIFICATE.

TERRITORY OF NEVADA,
SECRETARY'S OFFICE. CARSON CITY. }

I HEREBY CERTIFY, that the Laws contained in this printed volume are true and literal copies of the enrolled laws passed by the first Legislative Assembly, held during the months of October and November, eighteen hundred and sixty-one, on file in my office.



WITNESS my hand and the Seal
of the Territory hereunto
annexed, this fifteenth day
of January, A. D. eighteen
hundred and sixty-two.

ORION CLEMENS,
Sec'y of the Territory.

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ACT OF CONGRESS

ORGANIZING THE TERRITORY OF NEVADA.

An Act to Organize the Territory of Nevada.

[Approved March 2, 1861.]

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States, included within the following limits, to wit:—Beginning at the point of intersection of the forty-second degree of north latitude with the thirty-ninth degree of longitude west from Washington; thence, running south on the line of said thirty-ninth-degree of west longitude, until it intersects the northern boundary line of the territory of New Mexico; thence due west, to the dividing ridge separating the waters of Carson Valley from those that flow into the Pacific; thence on said dividing ridge northwardly to the forty-first degree of north latitude; thence due north to the southern boundary line of the state of Oregon; thence due east to the place of beginning, be, and the same is hereby, erected into a temporary government, by the name of the territory of Nevada; *provided*, that so much of the territory within the present limits of the state of California, shall not be included within this territory until the state of California shall assent to the same, by an act irrevocable without the consent of the United States; *provided*, further, that nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits, or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Nevada, until said tribe shall signify their assent to the President of the United States, to be included within the said territory, or to affect the authority of the government of the United States to make any regula-

Boundaries.

California
may cede.

Rights of
Indians.

Territory
may be
divided.

tions respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed; *provided*, further, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state.

Executive
power.

Commander-
in-chief.

Superinten-
dent of In-
dian affairs.

Governor,
powers of.

SEC. 2. *And be it further enacted*, that the executive power and authority in and over said territory of Nevada, shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offenses against the laws of said territory, and reprieves for offenses against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

Secretary of
territory.

Duties of.

When acting
governor.

Legislative
power in
whom vested

Council,
members of.

SEC. 3. *And be it further enacted*, that there shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first day of December in each year, to the President of the United States, and at the same time two copies of the laws to the speaker of the house of representatives and the president of the senate, for the use of congress; and in case of the death, removal, or resignation, or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required, to execute and perform all the powers and duties of the governor, during such vacancy; or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

SEC. 4. *And be it further enacted*, that the legislative power and authority of said territory shall be vested in the governor, and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The

house of representatives shall consist of thirteen members, which may be increased to twenty-six, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and of the house of representatives, giving to each section of the territory representation in the ratio of its population (Indians excepted), as nearly as may be; and the members of the council and of the house of representatives shall reside in, and be inhabitants of the district for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken; and the first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and he shall, at the same time, declare the number of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected having the highest number of votes in each of said council districts for members of the council, shall be declared by the governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be elected members of the house of representatives; *provided*, that in case of a tie between two or more persons voted for, the governor shall order a new election, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly, shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representations, in the several counties or districts, to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly; *provided*, that no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

SEC. 5. *And be it further enacted*, That every free white male inhabitant of the United States above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office at all subsequent elections, shall be such as shall be prescribed by the legislative assembly; *provided*, that the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared

House of
representa-
tives, mem-
bers of.Apportion-
ment.

Census.

Election.

Legislative
Assembly,
meeting of.

Term of.

Voters, qual-
ification of.Who to hold
office.

on oath their intention to become such, and shall have taken an oath to support the constitution of the United States.

Legislative
power, what
to extend to.

SEC. 6. *And be it further enacted,* That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States, and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents; nor shall any law be passed impairing the rights of private property; nor shall any discrimination be made in taxing different kinds of property; but all property subject to taxation shall be in proportion to the value of the property taxed.

Certain
officers, how
appointed.

SEC. 7. *And be it further enacted,* That all township, district, and county officers, not herein otherwise provided for, shall be appointed, or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory. The governor shall nominate and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and, in the first instance, the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

Restrictions
on members
of legislative
assembly.

SEC. 8. *And be it further enacted,* That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

Judicial
power, how
vested.

SEC. 9. *And be it further enacted,* That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of the justices of

Supreme
court, what
to consist.

Judicial
districts.

Jurisdiction
of courts.

the peace, shall be as limited by law; *provided*, that justices of the peace shall not have jurisdiction of any matter in controversy when the title of boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction; and authority for redress of all wrongs committed against the constitution or laws of the United States, or of the territory, affecting persons or property. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeals in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of Utah Territory now receive for similar services.

SEC. 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Utah. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district

Proviso.

Register in
chancery.

Writs, etc.

Courts,
clerk of.Writs of
error and
appeals, pro-
ceedings on.*Habeas
corpus.*Fees of
clerks of
court.Attorney for
territory,
compensat'nMarshal,
compensat'n

courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

Territorial
officers, ap-
pointment of

Oaths of
office, how
taken.

To be cer-
tified to.

Salaries.

How paid.

Members of
legislative
assembly,
compensa-
tion of.

Contingent
expenses.

Incidental
and legisla-
tive expenses

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice, or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs; the chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars; the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars for every twenty miles' travel in going to and returning from the said session, estimated according to the nearest usually traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor to defray the contingent expenses of the territory. There shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other inci-

dental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted*, That the legislative assembly of the territory of Nevada shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

Legislative assembly, time for holding first session.

SEC. 13. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve during each congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly.

Delegate to congress.

First territorial election.

SEC. 14. *And be it further enacted*, That when the land in said territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in the states hereafter to be erected out of the same.

Land reserved for school purposes.

SEC. 15. *And be it further enacted*, That temporarily, and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Governor to define judicial districts and assign judges.

SEC. 16. *And be it further enacted*, That the constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said territory of Nevada as elsewhere within the United States.

Constitution and laws of United States applicable.

SEC. 17. *And be it further enacted*, That the president of the

Surveyor-
general, how
appointed,
etc.

Compensat'n

United States, by and with the advice and consent of the senate, shall be, and he is hereby, authorized to appoint a surveyor-general for Nevada, who shall locate his office at such place as the secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor-general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may, from time to time deem it advisable to give him.

LIST OF OFFICERS,

FEDERAL AND TERRITORIAL, LOCATED AT CARSON CITY.

EXECUTIVE DEPARTMENT, ETC.

NAMES.	OFFICIAL POSITION.	RESIDENCE.
JAMES W. NYE.....	<i>Governor and Sup't of Indian Affairs.....</i>	Carson City.....
Orion Clemens.....	<i>Secretary of Territory.....</i>	Carson City.....
Benj. B. Bunker.....	<i>Attorney-General.....</i>	Carson City.....
.....	<i>Marshal.....</i>	Carson City.....
..... Lockhart.....	<i>Indian Agent.....</i>	Carson City.....
Perry G. Childs.....	<i>Territorial Auditor.....</i>	Carson City.....
J. H. Kinkead.....	<i>Territorial Treasurer.....</i>	Carson City.....
.....	<i>Territorial Sup't of Public Instruction.....</i>	Carson City.....
S. C. Gallaher.....	<i>Governor's Private Secretary.....</i>	Carson City.....

SURVEYOR-GENERAL'S OFFICE.

John W. North.....	<i>Surveyor-General.....</i>	Carson City.....
Butler Ives.....	<i>Deputy Surveyor-General.....</i>	Carson City.....
John F. Kidder.....	<i>Chief Clerk.....</i>	Carson City.....
Julius E. Garrett.....	<i>Assistant Clerk.....</i>	Carson City.....
John Cradlebaugh.....	<i>Delegate to Congress.....</i>	Carson City.....

JUDICIAL DEPARTMENT.

SUPREME COURT.

George Turner.....	<i>Chief Justice.....</i>	Carson City.....
Horatio N. Jones.....	<i>Associate Justice.....</i>	Carson City.....
Gordon N. Mott.....	<i>Associate Justice.....</i>	Carson City.....
J. McC. Reardon.....	<i>Clerk.....</i>	Carson City.....

DISTRICT COURTS.

FIRST—COMPRISING LAKE, STOREY, AND WASHOE COUNTIES.

Gordon N. Mott.....	<i>Judge.....</i>	Virginia City.....
David M. Hanson.....	<i>Clerk.....</i>	Virginia City.....
Dighton Corson.....	<i>District Attorney.....</i>	Virginia City.....

SECOND—COMPRISING DOUGLAS, ESMERALDA, AND ORMSBY COUNTIES.

George Turner.....	<i>Judge.....</i>	Carson City.....
Alfred Helm.....	<i>Clerk.....</i>	Carson City.....
Marcus D. Larowe.....	<i>District Attorney.....</i>	Carson City.....

THIRD—COMPRISING CHURCHILL, HUMBOLDT, AND LYON COUNTIES.

Horatio N. Jones.....	<i>Judge.....</i>	Dayton.....
Alfred James.....	<i>Clerk.....</i>	Dayton.....
E. B. Zabriskie.....	<i>District Attorney.....</i>	Dayton.....

LIST OF OFFICERS, ETC.

PROBATE COURTS.

NAMES.	OFFICIAL POSITION.	RESIDENCE.
.....	Churchill County (Attached to Lyon Co. for judicial purposes).....	Buckland's
Notewire.....	Douglas County.....	Genoa.....
(Not appointed)	Esmeralda County.....	Aurora.....
A. W. Oliver	Humboldt County.....	Unionville
(Not appointed)	Lake County.....	(Not selected)
Wm. Hayden.....	Lyon County.....	Dayton.....
E. C. Dixon	Ormsby County	Carson City
L. W. Ferris	Storey County	Virginia City.....
(Not appointed)	Washoe County	Washoe City

LEGISLATIVE DEPARTMENT.

COUNCIL.

OFFICERS.

J. L. VAN BOKKELEN.....	<i>President</i>	Virginia City.....
Henry O. Smeathman.....	<i>Secretary</i>	Virginia City.....
Wm. H. Barstow.....	<i>Assistant Secretary</i>	Virginia City.....
Noah T. Carpenter.....	<i>Sergeant-at-arms</i>	Aurora.....
P. H. Shannon.....	<i>Messenger</i>	Susanville
Henry Lewis.....	<i>Page</i>	Carson City.....

MEMBERS.

J. W. Pugh.....	First District.....	Aurora
Ira M. Luther.....	Second District.....	Genoa.....
Wm. M. Stewart.....	Third District.....	Carson City.....
John W. Grier.....	Fourth District.....	Silver City.....
Thomas Hannah.....	Fifth District.....	Gold Hill.....
A. W. Pray.....	Sixth District.....	Virginia City.....
J. L. Van Bokkelen.....	Sixth District.....	Virginia City.....
Solomon Geller.....	Seventh District.....	Washoe Valley.....
(None elected.).....	Eighth District.....	
Isaac Roop.....	Ninth District.....	Honey Lake.....

ASSEMBLY.

OFFICERS.

MILES N. MITCHELL.....	<i>Speaker</i>	Virginia City.....
Wm. Martin Gillespie.....	<i>Clerk</i>	Carson City.....
Samuel E. Wetherill.....	<i>Assistant Clerk</i>	Virginia City.....
Charles C. Conger.....	<i>Assistant Clerk</i>	Carson City.....
J. B. Cormack.....	<i>Sergeant-at-arms</i>	Carson City.....
G. S. Pierson.....	<i>Messenger</i>	Carson City.....
Robert T. Haslan.....	<i>Page</i>	Buckland's

MEMBERS.

Wm. E. Teall.....	First District.....	Aurora
Samuel Youngs.....	First District.....	Aurora
James McLean.....	Second District.....	Genoa.....
Wm. P. Harrington, jr.....	Third District.....	Carson City.....
John D. Winters.....	Third District.....	Carson City.....
Wm. L. Card.....	Fourth District.....	Silver City
R. M. Ford.....	Fourth District.....	Dayton.....
John H. Mills	Fifth District.....	Gold Hill.....
Mark H. Bryan.....	Sixth District.....	Virginia City.....
Ephraim Durham.....	Sixth District.....	Virginia City.....
Miles N. Mitchell.....	Sixth District.....	Virginia City.....
Edward C. Ing.....	Seventh District.....	Truckee Meadows.....
James H. Sturtevant.....	Seventh District.....	Washoe Valley.....
Wm. J. Osborn.....	Eighth District.....	Buckland's
John C. Wright.....	Ninth District.....	Honey Lake Valley.....

L A W S .

L A W S
OF THE
TERRITORY OF NEVADA,

PASSED AT THE
FIRST REGULAR SESSION OF THE LEGISLATIVE ASSEMBLY,
BEGUN THE FIRST DAY OF OCTOBER, AND ENDED THE TWENTY-NINTH
DAY OF NOVEMBER, 1861, AT CARSON CITY.

CHAPTER I.—*An Act adopting the Common Law.*

[Approved October 30, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The Common Law of England, so far as it is not repugnant to, or inconsistent with the Constitution or Laws of the United States, or the Laws of the Territory of Nevada, shall be the rule of decision in all Courts of this Territory.

Application
of Common
Law.

SEC. 2. This act shall take effect from and after its passage.

CHAP. II.—*An Act to designate the Holidays to be observed in the acceptance and payment of Bills of Exchange and Promissory Notes.*

[Approved October 30, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The following days, namely: the first day of January, Washington's birthday, or the twenty-second day of February, the fourth day of July, thanksgiving day on the pro-

Holidays
designated.

Grace al-
lowed except
on sight bill.

clamation of the Governor, the twenty-fifth day of December, commonly called Christmas day, shall for all purposes whatsoever as regards the presenting for payment, or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, checks, and promissory notes, made after the passage of this act, be treated and considered as is the first day of the week, usually called Sunday. Three days, commonly called days of grace shall be allowed, except on sight bills or drafts; and any one of the Holidays specified in this act coming within the three days of grace shall be counted as one of such days.

SEC. 2. This act shall take effect from and after the second day of December, A. D. one thousand eight hundred and sixty-one.

CHAP. III.—*An Act empowering the Governor to appoint Commissioners of Deeds, and defining the duties of such office.*

[Approved October 30, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Appointed
by Governor.

Term of
office.

Powers.

Acts legal.

How to
qualify.

SECTION 1. That the Governor may, when in his judgment it may be necessary, appoint in each of the United States, and in each of the Territories and Districts of the United States, and in each Foreign State, Territory, Colony, and Kingdom, one or more Commissioners, to continue in office four years, unless sooner removed by the Governor. Every such Commissioner shall have power to administer oaths, and to take depositions and affidavits to be used in this Territory, and also to take the acknowledgment or proof of any deed or other instrument to be recorded in this Territory.

SEC. 2. All oaths administered by said Commissioners, all depositions and affidavits taken by them, and all acknowledgments and proofs aforesaid certified by them, and under their seal as such Commissioner, shall have the same force and effect in law, to all intents and purposes, as if done and certified by any Recorder, or other officer within this Territory who is now, or may hereafter, be authorized by law to perform such acts.

SEC. 3. Before any Commissioner, appointed as aforesaid shall proceed to perform any of the duties of his office, he shall take and subscribe an oath, as prescribed by the United States, before some officer authorized to administer oaths, at the place for which such Commissioner may be appointed, that he will faithfully perform and discharge all the duties of his office; which oath shall be filed in the office of the Secretary

of the Territory of Nevada, within six months after taking the same.

SEC. 4. It is hereby made the duty of the Secretary of the Territory to furnish each Commissioner, appointed as aforesaid with a copy of this act. To be furnished.

SEC. 5. Before any Commission shall be issued by the Secretary of the Territory, under the provisions of this act, a fee of five dollars on such Commission, shall be paid to the said Secretary, and which shall be accounted for, and appropriated to, the Common School Fund, for the use of the Territory, in such manner as may be hereafter provided by law, and no other charge shall be made for issuing such Commission. Fee and application of

SEC. 6. This act shall take effect immediately.

CHAP. IV.—*An Act to regulate Official Oaths.*

[Approved October 30, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That all officers elected, appointed or chosen, before entering upon the duties of their office, and all attorneys, counselors and solicitors in chancery, in all the courts of this Territory, before being admitted to practice, shall take, and subscribe to, the following oath, viz: Officers and attorneys to take oath.

“I, (*here name the person and the office to which he has been elected, appointed or chosen,*) do solemnly (*swear or affirm*) that I will support, protect, and defend the constitution and Government of the United States, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution, or law, of any State convention, or legislature, to the contrary notwithstanding; and further, that I do this with a full determination, pledge and purpose, without any mental reservation or evasion whatsoever; and, further, that I will well and faithfully perform all the duties which may be required of me by law. So help me God.” Form of oath.

Sworn to and subscribed before me this — day of —.

SEC. 2. All attorneys, counselors, and solicitors in chancery who have been admitted to the bar of courts of this Territory, prior to the passage of this Act, shall not be allowed to appear, or practice, in any court of this Territory, on and after the second day of December, A. D. eighteen hundred and sixty-one, unless he shall take and subscribe to the foregoing oath. Neglect to take oath.

CHAP. V.—*An Act relative to Bills of Exchange and Promissory Notes.*

[Approved October 31, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

* When negotiable.

SECTION 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or to his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.

When valid.

SEC. 2. Every such note, signed by the agent of any person, under a general or special authority, shall bind such person, and shall have the same effect and be negotiable, as above provided.

"Person," how construed.

SEC. 3. The word "person," in the last two preceding sections, shall be construed to extend to every corporation capable by law of making contracts.

Action by payee and indorsee.

SEC. 4. The payees and indorsees of every such note, payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned against the makers and indorsees of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Notes payable to fictitious person valid.

SEC. 5. Such notes, made payable to the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to the bearer.

Acceptance to be in writing.

SEC. 6. No person within this Territory shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

On separate paper.

SEC. 7. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

Promise to accept.

SEC. 8. An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of any person who, upon the faith thereof, shall have received the bill for a valuable consideration.

Refusal to accept.

SEC. 9. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill: a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

SEC. 10. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill. Damages for not accepting.

SEC. 11. Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, shall be deemed to have accepted the same. Constructive acceptance.

SEC. 12. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange, drawn or negotiated within this Territory, shall be as follows: 1. If such bill shall have been drawn upon any person or persons in any of the United States, east of the Rocky Mountains, fifteen dollars upon the hundred upon the principal sum specified in such bill. 2. If such bill shall have been drawn upon any person or persons in any port or place in Europe, or in any foreign country, twenty dollars upon the hundred upon the principal sum specified in such bill. Damages on protested bills.

SEC. 13. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment of such principal sum shall have been demanded. Interest on amount of protested bills.

SEC. 14. If the contents of such bill be expressed in money of account of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, shall be ascertained and determined without any reference to the rate of exchange existing between this Territory and the place on which such bill shall have been drawn at the time of the demand of payment, or of notice of non-payment. Rate of exchange.

SEC. 15. If the contents of such bill be expressed in the money of account, or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency at the time of demand of payment. Rate of exchange in foreign currency.

SEC. 16. When a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed on the protest for non-acceptance as provided in the last four sections, and shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-acceptance; but the holder shall be entitled to recover interest upon the aggregate amount of the Damages on protest for non-acceptance.

principal sum specified in the bill, and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

Damages, by whom recovered.

SEC. 17. The damages allowed by this act shall be recovered only by the holder of the bill, who shall have purchased the same, or some interest therein, for a valuable consideration.

Notice of dishonor, how given.

SEC. 18. In all cases where a notice of non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument, may be given, by sending the same by mail, it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resided at the time of drawing, making or indorsing such bill of exchange, promissory note, or other negotiable instrument, unless such person, at the time of affixing his signature to such bill, note, or other negotiable instrument, shall, in addition thereto, specify thereon the post-office to which he may require the notice to be addressed.

Not to apply

SEC. 19. Nothing in this act shall apply to bills of exchange, promissory notes, or other negotiable instrument, made or drawn before this act take effect.

SEC. 20. This act shall take effect on and after the second day of December, A. D. eighteen hundred and sixty-one.

CHAP. VI.—*An Act relative to Attorneys and Counselors at Law.*

[Approved October 31, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Designation.

SECTION 1. All persons admitted to practice in any of the Courts of this Territory, shall be known as Attorneys and Counselors at Law.

Whom admitted.

SEC. 2. Any white male citizen, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, shall be entitled to admission as Attorney and Counselor in all the courts of this Territory.

Qualifications.

SEC. 3. Every applicant for admission as Attorney and Counselor shall produce satisfactory testimonials of good moral character, and undergo a strict examination, in open court, as to his qualifications, by one of the Judges of the Supreme Court of this Territory.

Certificate.

SEC. 4. If, upon examination, he be found duly qualified, the court shall admit him as Attorney and Counselor in all the courts of this Territory, and shall direct an order to be entered to that effect upon its records, and that a certificate of such

record be given to him by the Clerk of the court, which certificate shall be his license.

SEC. 5. The District Court of this Territory is authorized to admit, as Attorney and Counselor, any white male citizen of the age of twenty-one years, and of good moral character, who possesses the requisite qualifications, on similar testimonials and like examinations as are required by the preceding sections for admission by the Supreme Court, and may direct its Clerk to give a certificate of such admission, which certificate shall be his license to practice in such court. District Courts may admit.

SEC. 6. Every person, before receiving a license to practice law, shall take the oath prescribed by law, and pay over to the Territorial Treasurer the sum of ten dollars for the use of the Territorial Library Fund, and the Clerk of the court shall require of the person so admitted the receipt of the said Treasurer, before issuing such license, and in no case shall the oath be administered and the license issued until such receipt is produced and filed in the office of the Clerk. License fee, and how applied.

SEC. 7. The examination may be dispensed with, in the case of a person who has been admitted Attorney and Counselor in the highest courts of a sister State, or Territory; his affidavit of such admission, or his license showing the same, shall be deemed sufficient to entitle him to admission. Examination dispensed with.

SEC. 8. Each Clerk shall keep a roll of Attorneys and Counselors of the court of which he is Clerk, which shall be a record of the court. Roll to be kept.

SEC. 9. If any person shall practice law in any court, except a Justices', Recorder's or Police Courts, without having received a license as Attorney and Counselor, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt. Penalty.

SEC. 10. An Attorney and Counselor shall have authority: Authority. First. To bind his client in any of the steps of an action or proceeding, by his agreement filed with the Clerk, or entered upon the minutes of the court, and not otherwise. Second. To receive money claimed by his client in an action or proceeding, during the pendency thereof, or within one year after judgment and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction in the judgment.

SEC. 11. The Attorney in an action, or special proceeding, may be changed at any time before judgment or final determination, as follows: First. Upon his own consent, filed with the Clerk, or entered upon the minutes. Second. Upon the order of the court or Judge thereof, on the application of the client. Change of Attorney.

SEC. 12. When an Attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party, until then he shall be bound to recognize the former Attorney. Notice of change.

Death or
removal.

SEC. 13. When an Attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as Attorney shall, before any further proceedings be had against him, be required by the adverse party by written notice, to appoint another Attorney, or to appear in person.

How
removed.

SEC. 14. An Attorney and Counselor may be removed or suspended by the Supreme Court, and by no other court in the Territory, for either of the following causes, arising after his admission to practice. First. Upon his being convicted of felony or misdemeanor, involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence. Second. For willful disobedience or violation of the order of a court, requiring him to do, or forbear, an act connected with, or in the course of, his profession. Third. For misconduct in office or for good cause shown.

Conviction.

SEC. 15. In case of the conviction of an Attorney or Counselor of a felony, or misdemeanor involving moral turpitude, the Clerk of the court in which the conviction was had, shall, within thirty days thereafter, transmit to the Supreme Court a certified copy of the record of conviction.

Proceedings
to remove.

SEC. 16. The proceedings to remove, or suspend, an Attorney and Counselor, under the first subdivision of section fourteenth, shall be taken by the court on the receipt of the certified copy of the record of convictions; the proceedings under the second and third subdivision of section fourteenth may be taken by the court for matters within its knowledge, or may be taken upon the information of another.

Accusation.

SEC. 17. If the proceedings be upon the information of another, the accusation shall be in writing, and shall be presented to the court.

Same.

SEC. 18. The accusation shall state the matters charged, and shall be verified by the oath of the person making it, or some other person, to the effect that the charges therein contained are true.

Answer.

SEC. 19. After receiving the accusation, the court shall, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation, at a specified time, in the same or subsequent term, and shall cause a copy of the order, and of the accusation, to be served upon the accused, within a prescribed time before the day appointed in the order.

Pleadings.

SEC. 20. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he do not appear, the court may proceed and determine the accusation in his absence.

Same.

SEC. 21. The accused may answer to the accusation, either by objecting to the sufficiency, or by denying its truth.

Same.

SEC. 22. If he object to the sufficiency of the accusation, the objection shall be in writing, but need not be in any spec-

ific form; it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the accusation, the denial may be oral, and without oath, and shall be entered upon the minutes.

SEC. 23. If an objection to the sufficiency of the accusation be not sustained, the accused shall answer forthwith. Same.

SEC. 24. If the accused plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal or suspension. If he deny the matter charged, the court shall immediately, or at such time as it may appoint, proceed to try the accusation. Same.

SEC. 25. The court may, in its discretion, order a reference to a committee to take depositions in the matter, and to report to the court, before proceeding to try the accusation. Trial.

SEC. 26. Upon conviction, in cases arising under the first subdivision of section fourteenth, the judgment of the court shall be, that the name of the party be stricken from the roll of Attorneys and Counselors of the court, and he be precluded from practicing as such Attorney or Counselor in all the courts of this Territory; and, upon conviction in cases under the second and third subdivisions of section fourteenth, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right of practice as Attorneys or Counsellors in the courts of this Territory, permanently or for a limited period. Judgment on conviction.

SEC. 27. Nothing in this act shall be so construed as to prevent any person from appearing in his own behalf, in any court of this Territory. Party may appear.

CHAP. VII.—*An Act concerning Judgments of the Probate Court of Carson County.*

[Approved October 31, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That all decrees of the *de-facto* Probate Court of Carson County, Territory of Nevada, rendered in actions of divorce, on, and subsequent to, the second day of March, one thousand eight hundred and sixty-one, be, and the same are hereby legalized and rendered as valid in law, for all purposes, as though the same had been pronounced by a court of competent power and authority to render the said decrees. And that the bonds of matrimony heretofore existing between the several parties to said decrees be, and the same are, hereby dissolved, and rendered null and void, and that the said several parties to said decrees be, and they are, hereby restored to all the Decrees of, made valid in certain cases.

Decrees of, to
be evidence.

rights and privileges of unmarried persons, from the date of the said decrees to which they are parties respectively. That said several decrees shall be competent and sufficient evidence, in connection with this act, to prove the facts contained in said decrees, and said evidence shall be as effectual for all purposes as though said decrees had been rendered by a court of legal authority and full power.

SEC. 2. This act to be in force from and after its passage.

CHAP. VIII.—*An Act to audit the Claim of John L. Blackburn, and to provide for the payment of the same.*

[Approved October 31, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Claim
allowed.

SECTION 1. That the account and claim of John L. Blackburn, as Deputy United States Marshal of the Territory of Utah, and as Sheriff of the County of Carson, for official services rendered, and fees in criminal cases, up to October first, one thousand eight hundred and sixty-one, amounting to the sum of eleven thousand six hundred and thirty-one dollars and twenty-five cents, (\$11,631 25), be, and the same is, hereby audited and allowed as indebtedness against the Territory of Nevada.

Bonds to be
issued.

SEC. 2. It shall be the duty of the Territorial Auditor, as soon as such officer shall have been elected or appointed, to issue to the said John L. Blackburn, three bonds, in equal amounts, which shall in the aggregate equal the sum of eleven thousand six hundred and thirty-one dollars twenty-five cents.

How paid.

One of said bonds to be payable out of the revenue of the first fiscal year, after the passage of this Act, and one payable out of the revenue of the second fiscal year, and the other payable out of the revenue of the third fiscal year. The said bonds

Interest.

shall draw interest from the time of their issuance until the payment of the same, at the rate of ten per cent. per annum.

When paid.

SEC. 3. It shall be the duty of the Territorial Treasurer to pay each of said bonds, out of the first moneys of the several fiscal years, in the last section enumerated.

Unpaid war-
rants of Car-
son County
Court.

SEC. 4. All unpaid warrants heretofore issued to John L. Blackburn, by a body styling themselves the County Court of Carson County, are hereby declared void, and the Auditor shall not issue the bonds provided for in this Act, until all such unpaid warrants, issued by a body styling themselves the County Court of Carson County, as aforesaid, shall have been filed in his office.

CHAP. IX.—*An Act concerning Conveyances.*

[Approved November 5, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded, as hereinafter directed. Conveyance by deed.

SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed, if she were unmarried. By married women.

SEC. 3. Every conveyance in writing, whereby any real estate is conveyed, or may be affected, shall be acknowledged or proved and certified, in the manner hereinafter provided. Acknowledgement of.

SEC. 4. The proof or acknowledgment of every conveyance affecting any real estate, shall be taken by some one of the following officers: First. If acknowledged or proved within this Territory, by some Judge, or Clerk, of a Court having a seal, or some Notary Public, or Justice of the Peace, of the proper county. Second. If acknowledged or proved without this Territory, and within the United States, by some Judge, or Clerk, of any Court of the United States, or of any State, or Territory, having a seal, or by any Commissioner appointed by the government of this Territory for that purpose. Third. If acknowledged or proved without the United States, by some Judge or Clerk of any court of any state, kingdom, or empire, having a seal, or by any Notary Public therein, or by any Minister, Commissioner, or Consul, of the United States appointed to reside therein. By whom to be taken.

SEC. 5. Every officer shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be indorsed or annexed to such conveyance, such certificate shall be: First. When granted by any Judge or Clerk, under the hand of such Judge or Clerk, and the seal of the court. Second. When granted by an officer who has a seal of office, under the hand and official seal of such officer. Certificate of acknowledgment.

SEC. 6. No acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, shall be taken, unless the person offering to make such acknowledgment shall be personally known, to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness. Identity of person making acknowledgment to be proved.

SEC. 7. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known, to the officer granting the certifi- Certificate, what to state.

cate, to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

Form of

SEC. 8. Such certificate shall be substantially in the following form, to wit: "Territory of Nevada, county of _____. On this _____ day of _____, A. D. _____, personally appeared before me, a Notary Public (or Judge, or officer, as the case may be,) in and for said county, A. B., known to me to be the person described in, and who executed the foregoing instrument, who acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned."

Form of,
when
grantor is
unknown.

SEC. 9. When the grantor is unknown to the court or officer taking the acknowledgment, the certificate shall be in the following form, to wit: "Territory of Nevada, county of _____. On this _____ day of _____, A. D. _____, personally appeared before me, a Notary Public (or Judge, or officer, as the case may be,) in and for the said county, A. B., satisfactorily proved to me to be the person described in, and who executed, the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned."

Proof of
execution of
conveyance.

SEC. 10. The proof of the execution of any conveyance, whereby any real estate is conveyed, or may be affected, shall be: First. By the testimony of a subscribing witness; or, Second. When all the subscribing witnesses are dead, or cannot be had by evidence of the handwriting of the party, and of, at least, one subscribing witness, given by a credible witness to each signature.

Same.

SEC. 11. No proof by a subscribing witness shall be taken unless such witness shall be personally known, to the officer taking the proof, to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

Proof
necessary.

SEC. 12. No certificate of such proof shall be granted unless such subscribing witness shall prove the person, whose name is subscribed thereto as a party, is the person described in, and who executed, the same; that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

Certificate of
proof, what
to set forth.

SEC. 13. The certificate of such proof shall set forth the following matters: First. The fact that such subscribing witness was personally known to the officer granting the certificate to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate. Second. The proof given by such witness of the

execution of such conveyance, and of the fact that the person, whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

SEC. 14. No proof by evidence of the handwriting of the party, and of a subscribing witness, shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof. Proof by evidence of handwriting.

SEC. 15. No certificate of any such proof shall be granted unless a competent and credible witness shall state, on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature, (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall, in like manner, state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature, (stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person. When certificate on proof of handwriting to be granted.

SEC. 16. Upon the application of any grantee in any conveyance required by this Act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgement or proof of such conveyance, may issue a subpoena requiring such witness to appear before such officer, and testify touching the execution thereof. Witnesses may be subpoenaed to testify as to execution.

SEC. 17. Every person who being served with a subpoena, shall without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the Judge of some court of record, there to remain without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have been first tendered to him. Penalty for refusing to obey subpoena.

SEC. 18. A certificate of the acknowledgement of any conveyance, or of the proof of the execution thereof, as provided in this act, signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the Recorder of any county in this Territory. To be recorded.

By married
women.

SEC. 19. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and her husband, and certified, in the manner hereinafter provided, by the proper officer taking the acknowledgment.

Covenants
binding on
married
women.

SEC. 20. No covenant, express or implied, in any such conveyance, shall bind such married woman or her heirs, except so far as may be necessary effectually to convey, from such married woman and her heirs, all her rights and interest expressed to be conveyed in such conveyance.

Acknowledgment of
married
women.

SEC. 21. Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

Same.

SEC. 22. No such acknowledgment shall be taken, unless such married woman shall be personally known, to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness; nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge on an examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her said husband, and that she does not wish to retract the execution of the same.

Form of
certificate of
acknowledgment of mar-
ried women.

SEC. 23. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known, to the officer granting the same, to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this act shall be valid.

To be
recorded.

SEC. 24. Every conveyance of real estate, and every instrument of writing, setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged and certified, in the manner prescribed in this act, to operate as notice to third persons, shall be recorded in the office of the Recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto, without such record.

Valid with-
out record.

Record to be
notice.

SEC. 25. Every such conveyance or instrument of writing, acknowledged or proved and certified, and recorded in the manner prescribed in this act, shall, from the time of filing the

same with the Recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

SEC. 26. Every conveyance of real estate within this Territory, hereafter made, which shall not be recorded as provided in this act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded. When void.

SEC. 27. Every power of attorney, or other instrument in writing, containing the power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real estate is conveyed, or may be affected, shall be acknowledged, or proved and certified, and recorded as other conveyances whereby real estate is conveyed or affected, are required to be acknowledged or proved, and certified and recorded. Powers of Attorney to be recorded.

SEC. 28. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded. Revocation of Power to be recorded.

SEC. 29. Every conveyance, or other instrument, conveying or affecting real estate, which shall be acknowledged, or proved and certified, as hereinafter prescribed, may, together with the certificate of acknowledgment, or proof, be read in evidence without further proof. Evidence of.

SEC. 30. When any such conveyance, or instrument, is acknowledged or proved, certified and recorded, in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance, or instrument, is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the Recorder, under the seal of his office, may be read in evidence without further proof. Evidence of, when lost.

SEC. 31. Neither the certificate of the acknowledgment, nor of the proof, of any such conveyance, or instrument, nor the record, nor the transcript of the record, of such conveyance or instrument, shall be conclusive, but the same may be rebutted. Evidence may be rebutted.

SEC. 32. If the party contesting the proof of any such conveyance, or instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance, or instrument, nor the record thereof, shall be received in evidence, until established by other competent proof. Proof by other evidence.

SEC. 33. If any person shall convey any real estate, by conveyance purporting to convey the same in fee simple abso- Subsequent title to inure to grantee.

lute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterward acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

Adverse
title.

SEC. 34. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he was in actual possession thereof.

Mortgage,
how dis-
charged.

SEC. 35. Any mortgage that has been, or may hereafter be, recorded may be discharged, by an entry on the margin of the record thereof, signed by the mortgagee, or his personal representative, or assignee, acknowledging the satisfaction of the mortgage, in the presence of the Recorder, or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Same.

SEC. 36. Any mortgage shall also be discharged upon the record thereof by the Recorder, in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or approved and certified, as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Discharge to
be recorded.

SEC. 37. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record, in the minutes of the discharge of such mortgage, made by the Recorder, upon the record thereof.

Penalty for
refusing
certificate of
discharge.

SEC. 38. If any mortgagee, or his personal representative, or assignee, as the case may be, after a full performance of the conditions of the mortgage, whether before, or after, a breach thereof, shall for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to execute and acknowledge a certificate of discharge, or release, thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

Conveyances
heretofore
made.

SEC. 39. All conveyances of real estate heretofore made and acknowledged, or proved according to the laws in force at the time of such making and acknowledgment, or proof, shall have the same force as evidence, and be recorded in the same manner, and with like effect, as conveyances executed and acknowledged in pursuance of this act.

Legality of
not affected.

SEC. 40. The legality of the execution, acknowledgment, proof, form, or record of any conveyance, or other instrument, heretofore made, executed, acknowledged, proved, or recorded, shall not be affected by anything contained in this act; but

shall depend for its validity or legality upon the laws and customs then in existence and in force in the mining and agricultural districts.

SEC. 41. Every interest in real estate granted or devised to two or more persons, other than executors and trustees, as such, shall be a tenancy in common, unless expressly declared in the grant or devise to be a joint tenancy. Tenancy in common.

SEC. 42. The term heirs, or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant. Inheritance and conveyance of fee.

SEC. 43. Where a remainder in lands or tenements, goods or chattels, shall be limited by deed or otherwise, to take effect on the death of any person without heirs, or heirs of his or her body, or without issue, the word "heirs," or "issue," shall be construed to mean heirs or issue living at the death of the person named as ancestor. Heirs or issue and remainders.

SEC. 44. A future estate, depending on the contingency of the death of any persons without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person capable of taking by descent. Posthumous child.

SEC. 45. Where an estate shall be by any conveyance limited, in remainder, to the son or daughter or issue, or to the use of the son or daughter or issue of any person to be begotten, such son or daughter or issue, born after the decease of his or her father, shall take the estate in the same proportion, and in the same manner, as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death. Same.

SEC. 46. Grants of rents, or of reversions, or remainders, shall be good and effectual, without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, shall suffer any damage thereby. Attornments not necessary.

SEC. 47. The attornment of a tenant to a stranger shall be void, unless it be with the consent of the landlord of such tenant, or in pursuance to, or in consequence of, a judgment or decree of some court of competent jurisdiction. Attornments when void.

SEC. 48. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant, or agreement, in reference to the title of, in or to any real estate, shall be answerable, upon such covenant or agreement, to the extent of the land descended or devised to them, in the cases, and in the manner prescribed by law. Warranties abolished.

SEC. 49. The words "grant, bargain and sell," in all conveyances hereafter to be made, in and by which any estate of inheritance, or fee simple, is to be passed, shall, unless restrained by express terms contained in such conveyances, be construed Import of "grant, bargain and sell."

to be the following express covenants, and none other, on the part of the grantor, for himself and his heirs to the grantee, his heirs and assigns: First. That, previous to the time of the execution of such conveyance, the grantor has not conveyed the same real estate, or any right, title, or interest therein, to any person other than the grantee. Second. That such real estate is, at the time of the execution of such conveyance, free from incumbrances done, made, or suffered by the grantor, or any person claiming under him; and such covenants may be sued upon, in the same manner as if they had been expressly inserted in the conveyance.

Fraudulent conveyances, when void.

SEC. 50. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created, with the intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents, or profits, as against such purchasers, shall be void.

Same, when legal.

SEC. 51. No such conveyance, or charge, shall be deemed fraudulent in favor of a subsequent purchaser, who shall have legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

With power of revocation at will.

SEC. 52. Every conveyance or charge of or upon any estate, or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from said grantor for a valuable consideration, of any estate, or interest, so liable to be revoked, or determined, although the same be not directly revoked, determined, or altered by such grantor, by virtue of the power reserved, or expressed in such prior conveyance or charge.

Revocation and reconveyance.

SEC. 53. Where a power to revoke a conveyance of lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner, and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Same

SEC. 54. If a conveyance to a purchaser, under either of the last two preceding sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall, nevertheless, be valid from the time the power of revocation shall actually vest in such person, in the same manner, and to the same extent, as if then made.

Interests in land, except leases, to be deeded.

SEC. 55. No estate, or interest in lands, other than for leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating

thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance, in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized in writing.

SEC. 56. The preceding section shall not be construed to affect in any manner the power of a testator, in the disposition of his real estate, by a last will and testament, nor to prevent any trust from arising, or being extinguished by implication or operation of law. Not to apply to wills, etc.

SEC. 57. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made. Contracts to be in writing.

SEC. 58. Every instrument required to be subscribed by any person under the last preceding section, may be subscribed by the agent of such party lawfully authorized. Agent to subscribe.

SEC. 59. Nothing contained in this act shall be construed to abridge the powers of courts to compel the specific performance of agreements in cases of part performance of such agreements. When not applicable.

SEC. 60. All deeds of gift, conveyances, and all transfers, or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void, as against the creditors existing or subsequent of such person. Transfers in trust for assignors void.

SEC. 61. In the following cases every agreement shall be void, unless such agreement, or some note, or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged therewith: First. Every agreement that, by the terms, is not to be performed within one year from the making thereof. Second. Every special promise to answer for the debt, default, or miscarriage of another. Third. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry. Certain agreements void, unless in writing and signed.

SEC. 62. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars, or over, shall be void, unless: First. A note, or memorandum, of such contract, be made in writing, and be subscribed by the parties to be charged therewith; or, Second. Unless the buyer shall accept, or receive, part of such goods, or the evidences, or some of them, of such things in action; or, Third. Unless the buyer shall, at the time, pay some part of the purchase money. Same.

SEC. 63. Whenever goods shall be sold at auction, and auctioneer shall, at the time of sale, enter in a sale-memorandum, specifying the nature and price of the sold, the terms of the sale, the name of the purchaser, name of the person on whose account the sale

memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

Sale of goods,
when evi-
dence of
fraud.

SEC. 64. Every sale made by a vendor of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of things sold or assigned, shall be conclusive evidence of fraud, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith.

"Creditors"
defined.

SEC. 65. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor, or assignor, at any time while such goods and chattels shall remain in his possession, or under his control.

Mortgage of
personal
property,
when valid.

SEC. 66. No mortgage of personal property, hereafter made, shall be valid against any other person, than the parties thereto, unless possession of the mortgaged property be delivered to, and retained by the mortgagee; *provided*, that a mortgage upon growing crops, executed, acknowledged, and recorded like mortgages upon real estate, shall be valid, as against third parties, without such delivery of possession, but the lien of such mortgage shall cease, as against subsequent purchasers, unless possession of such crops, when harvested, be delivered to the mortgagee, as required in other cases of mortgage of personal property.

Bottomry,
responden-
tia, etc.

SEC. 67. Nothing contained in the last three sections shall be construed to apply to contracts of bottomry, respondentia, or assignments or hypothecations of vessels, or goods at sea, or in foreign states, or without this Territory; *provided*, the assignee, or mortgagee, shall take possession of such goods as soon as may be, after the arrival thereof within this Territory.

Agent to
subscribe.

SEC. 68. Every instrument required by any of the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

Contracts to
delay or
defraud cred-
itors void

SEC. 69. Every conveyance, or assignment, in writing, or otherwise, of any estate or interests in lands, or in goods in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond, or other evidence of debt given, suits commenced, decree, or judgment suffered, with the like intent, as against the persons hindered, delayed, or defrauded, shall be void.

Grants of
trust, when
void.

SEC. 70. Every grant, or assignment, of any existing trust in land, goods, or things in action, unless the same shall be in writing, subscribed by the person making the same, or by his agent lawfully authorized, shall be void.

SEC. 71. Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this act, as

against creditors, or purchasers, shall be equally void as against the heirs, successors, personal representatives, or assigns, of such creditors or purchasers.

Instruments when void against heirs.

SEC. 72. The question of fraudulent intent, in all cases arising under the provisions of this act, shall be deemed a question of fact, and not of law; nor shall any conveyance, or charge, be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Fraud a question of fact.

SEC. 73. The provisions of this act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Not to affect purchaser for value.

SEC. 74. The terms "lands," as used in this act, shall be construed as co-extensive in meaning with lands, tenements and hereditaments, and shall include in its meaning all possessory right to the soil for mining and other purposes, and the terms "estate and interest in lands," shall be construed and embrace every estate and interest, present and future, vested and contingent, in lands as above defined.

"Lands" and "estate and interest in lands" defined.

SEC. 75. The term "conveyance," as used in this act, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate, or interest, in lands is created, aliened, assigned, or surrendered.

Conveyance defined.

SEC. 76. A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings and improvements upon such lands, all quartz and mining claims, and all such personal property as shall be fixed in its structure to the soil, acknowledged in manner and form as mortgages upon real estate, are required by law to be acknowledged and recorded in the office of the Recorder in the county in which the property is situated, shall have the same effect against third persons as mortgages upon real estate.

Mortgage on possessory claims to be recorded.

SEC. 77. This act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations, or customs in regard to the locating, holding, or forfeiture, of claims, but, in all cases of mortgages of mining interests under this act, the mortgagee shall have the right to perform the same acts that the mortgagor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations, or customs of mines, and shall be allowed such compensation therefor as shall be deemed just and equitable by the court ordering the sale upon a foreclosure; *provided*, that such compensation shall, in no case, exceed the amount realized from the claim by a foreclosure and sale.

Mining rules not to be interfered with.

SEC. 78. No lands within this Territory shall hereafter be

Leases,
limitation of.

conveyed by lease, or otherwise, except in fee and perpetual succession, for a longer period than ten years; nor shall any town or city lots, or other real property, be so conveyed for a longer time than twenty years. All leases hereafter made, contrary to the provisions of this act, shall be void.

SEC. 79. This act shall take effect on and after the second day of December, A. D. one thousand eight hundred and sixty-one.

CHAP. X.—*An Act concerning Estray Animals.*

[Approved November 8, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Duty of per-
sons finding
estrays
animals.

SECTION 1. Every person finding any stray horse, mare, colt, mule, jack, or jenny, or any neat-foot animal, or any number of these animals, upon his farm or premises, shall, within ten days, if said animal or animals remain on his farm, or premises, go before some Justice of the Peace of his township, and give, under oath, a full description of the marks and brands, color, and kind of such animal or animals, also, the time, and all necessary information that will lead to the cause of the said animal or animals coming to his farm or premises that may have come to his knowledge, and the marks and brands have not been altered since they came to his farm or premises; *provided*, no animal shall be considered an estray if the owner is known to the person finding it. At the time the taker-up appears before the Justice as aforesaid, the Justice shall, without delay, appoint two disinterested appraisers, who are resident householders of the county, to appraise and describe such animal or animals.

Justice to
appoint
appraisers.

Duty of
Justice and
County
Recorder.

SEC. 2. It shall be the duty of the said Justice to record the description, together with full information given by the taker-up, and the Justice shall, within ten days, if the estray animal or animals is or are not before proved by their proper owner, transmit a full transcript to the County Recorder of his county, and the said Recorder shall record the same in his Estray Book; said book shall be subject to examination by all persons making application to the Recorder, and also the Estray Book of the Justice of the Peace, and every person claiming and proving said estray animal or animals that has or have been posted by this act, shall have restitution of the property so claimed, by paying all costs and such charges as may be awarded to the taker-up by the Justice of the Peace of his county.

Restitution
of property.

SEC. 3. Any person knowing of any horse, mare, colt, mule, jack, or jenny, or any number of neat cattle, or any number of these animals, running at large on his farm, or premises, and

not knowing the proper owner, who refuses, or neglects to comply with the requisitions of the foregoing section, shall be subject to a fine, not exceeding the value of the stock so neglected to be posted, recoverable before any court having jurisdiction of the same.

Penalty for neglecting to comply with provisions of act.

SEC. 4. No person shall be allowed, or permitted to use, or cause to be used to profit, or otherwise, any animal within his charge, or keeping, under the foregoing provisions of this act; and any person failing, or refusing to comply, with the requisitions set forth in this section, shall be subject to a fine not exceeding the value of the animal in question, nor less than ten dollars for each and every such offense committed.

Penalty for using stray animals.

SEC. 5. The owner of any stray animal, which is legally taken up under the provisions of this act, shall not be permitted to take, lead, or drive, the same from the farm or possession of the person legally possessed of such animal, until proven, and charges paid, according to the provisions of this act, and any person, knowingly and willfully violating the provisions of this section, shall be subject to all the penalties that he would be subject to under the statute law, provided he had no claim on such animal.

Penalty on owner for removing estrays.

SEC. 6. If any one shall remove any stray animal from any rancho, or farm, or inclosure, contrary to the provisions of this act, who shall not be the owner of the same, he shall be deemed guilty of grand, or petit larceny, according to the value of the property.

Same, when not owner.

SEC. 7. If the owner of any lost, or stray animal, shall not appear and prove his property therein, within three months, providing *they are neat foot animals, and valued at fifty dollars, and under that amount; and six months, provided they are horses, mules, or other animals, and valued at one hundred dollars and upwards*, after the same is posted he shall forfeit his right thereto, and the property in such animal shall be vested in the taker-up, on his paying into the county treasury the one half appraised value thereof, as fixed by the appraisers as aforesaid.

When reclaimed,

How forfeited.

SEC. 8. All moneys paid into the county treasury, under the provisions of this act, as above provided, shall become a part, and belong to the County School Fund of the county in which the proceedings are had, and be drawn from the county treasury on proper warrant, and shall be exclusively appropriated to the County School Fund, and for no other purpose.

Moneys paid, how disposed of.

SEC. 9. In all cases where services are performed by any officer, or person, under this act, the same fees shall be allowed as are allowed for similar services within the county thereof. All costs and charges accruing under this act, shall be paid by the person taking up the stray animal, or animals, but shall be reimbursed by the owner, upon proof and delivery of his property.

Fees.

Costs and reimbursement.

SEC. 10. If any stray animal die, or escape from the pos-

Taker-up not liable for death or escape. session of the taker-up, at any time before the expiration of six months from the taking up, he shall not be held liable in any manner on account of such animal.

Stallions taken up.

To be advertised.

To be castrated.

Spanish bulls.

SEC. 11. That if any stallion, one and a half years old, or upward, shall be found running at large, out of the inclosed ground of the owner, or keeper, of said horse, it shall be lawful for any person to take up such horse, and forthwith give notice to the owner, or keeper thereof, if said owner or keeper be known; and if the owner, or keeper, do not appear within three days thereafter, and pay to the said taker-up, five dollars as a compensation for his trouble, the taker-up shall proceed to advertise said horse; and the same proceedings shall be had in every respect, as herein before provided, in cases of stray horses; *provided*, that the taker up may, at the expiration of twenty days from the time of advertising, castrate, or procure to be castrated, the said horse, which shall be done at the risk and expense of the owner. And all Spanish bulls of one and a half year old, and upwards, found running at large, shall be castrated, or cut, as herein before provided.

SEC. 12. This act shall take effect from and after the second day of December, A. D. one thousand eight hundred and sixty-one.

CHAP. XI.—*An Act to Exempt the Homestead and other Property from Forced Sale in certain cases.*

[Approved November 13, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Exempt from execution.

SECTION 1. That the homestead, consisting of a quantity of land, together with the dwelling-house thereon and its appurtenances, not exceeding in value the sum of five thousand dollars, to be selected by the owner thereof, shall not be subject to forced sale on execution, or on any other final process from a court, for any debt or liability contracted or incurred at any time, in any other place than in this Territory, or for any debt or liability contracted in this Territory, after thirty days from the passage of this act; *provided*, the possessor thereof did not acquire the means of procuring such homestead through fraud or false representations.

Exemption not to extend to liens or mortgages.

SEC. 2. Such exemption shall not extend to any mechanic's, laborer's, or vendor's lien, or to any mortgage lawfully obtained; but no mortgage, sale, or alienation of any kind whatever, of such land by the owner thereof, if a married man, shall be valid without the signature of the wife to the same, acknowledged by her separately and apart from her husband;

provided, that the wife be a resident of this Territory, and that such signature and acknowledgment shall not be necessary to the validity of any mortgage upon the land, executed before it became the homestead of the debtor, or executed to secure the payment of the purchase money.

SEC. 3. Whenever any levy shall be made upon the land or tenements of a householder, whose homestead has not been selected and set apart, such householder may notify the officer, at the time of making such levy, of what he regards as his homestead, with a description thereof, and the remainder alone shall be subject to sale under such levy.

Officer making levy to be notified.

SEC. 4. If the plaintiff in execution shall be dissatisfied with the lands and tenements selected and set apart as aforesaid, the matter shall be submitted to two appraisers, one to be selected by the plaintiff and the other by the defendant, who shall determine whether such land and tenements exceed in value the sum of five thousand dollars. If the appraisers, so chosen, cannot agree, they shall appoint a third person to decide between them. If they cannot agree in the choice of a third person, he shall be named by the officer.

Appraisement.

SEC. 5. If the land selected as a homestead consist of a lot containing one acre or more, and the appraisers shall certify to the officer that such lot, together with the improvements thereon, exceeds in value the sum of five thousand dollars, the said officer may proceed to sell such excess, or the whole, at the option of the defendant in execution, in the manner provided in other cases for the sale of real property under execution. In case the excess only is sold, then such proceeds shall be applied to the satisfaction of the execution; and in case the whole amount of property is sold, five thousand dollars of the proceeds of such sale shall be paid to the defendant in execution, and the excess shall be applied to the satisfaction of the execution; *provided*, that no bid shall be received for a less sum than five thousand dollars.

Sale of excess in value of.

SEC. 6. In any case, where the land selected and claimed as a homestead shall exceed in extent one acre, if the appraisers be of opinion that such land, together with the dwelling-house and its appurtenances, exceed in value the sum of five thousand dollars, they shall set apart a portion thereof, in a compact form, including the dwelling-house, if possible, as the homestead; such homestead shall be, as near as may be, of the value of five thousand dollars: and the said appraisers shall cause the same to be surveyed; the expenses of such surveying shall be chargeable on the execution, and collected thereon.

Appraisers to set apart.

SEC. 7. After the survey shall have been made, the officer making the levy may sell the property levied upon and not included in the survey, as in cases of other sales of real estate under execution; and in giving a deed for the same, he may describe it according to his original levy, excepting therefrom,

Sale of part not included in survey.

by metes and bounds, according to the certificate of survey, the quantity set apart as aforesaid.

Appraisers
to be sworn.

SEC. 8. Before proceeding to act, the appraisers mentioned in this act shall be sworn by the officer to do justice between the parties. Their decision shall be delivered to the officer, shall be returned by him with the execution, and shall be conclusive between the parties, and for the protection of the officer against all liabilities. If the value of the homestead, so claimed as aforesaid, does not exceed the amount made exempt by this act, the cost of the proceedings shall be paid by the plaintiff in execution, otherwise by the defendant.

Decision
conclusive.

Costs.

Death of
owner.

Not to
extend to
unmarried
persons.

Exception.

Application
of act.

SEC. 9. The homestead, and other property exempt from forced sale, upon the death of the head of the family, shall be set apart by the probate court for the benefit of the surviving wife and his own legitimate children; *provided*, that the exemption, as provided in this section, shall not extend to unmarried persons, except when they have charge of minor brothers or sisters, or both, or brothers' or sisters' minor children, or a mother, or unmarried sisters living in the house with them.

SEC. 10. All heads of families, now occupying and settled upon, or who may hereafter occupy or settle upon, any of the public lands in this Territory, shall be entitled to the provisions of this act, as fully as if they were the owners of the land in fee simple.

Not to affect
tax sales.

SEC. 11. Nothing in this act shall be so construed as exempting any real or personal property from sale for taxes.

CHAP. XII.—*An Act defining the Time of Commencing Civil Actions.*

[Approved November 21, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

When com-
menced.

SECTION 1. Civil actions can only be commenced within the periods prescribed in this act, after the cause of action shall have accrued, except where a different limitation is prescribed by statute.

Same.

SEC. 2. When the cause of action has already accrued, the party entitled, and those claiming under him, shall have, after the passage of this act, the whole period herein prescribed, in which to commence an action.

By Territory
for real
property.

SEC. 3. The people of this Territory will not sue any person for, or in respect to, any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless,

First. Such right or title shall have accrued within ten

years before any action or other proceeding for the same shall be commenced ; or unless,

Second. The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.

SEC. 4. No action for the recovery of mining claims, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, or his assigns, was seized or possessed of such mining claim in question within two years before the commencement of such action. For recovery of mining claims.

SEC. 5. No cause of action, or defense to an action, founded upon the title to real property, or to rents, or to services out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question, within five years before the commencement of the act in *respect to which such action is prosecuted*, or defense made. For recovery of real property.

SEC. 6. Any peaceable entry upon real estate shall be deemed sufficient and valid as a claim, unless an action be commenced by the plaintiff for possession, within one year after the making of such entry ; or within five years from the time when the right to bring such action accrued. Where peaceable entry is made.

SEC. 7. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof, within the time prescribed by law ; and the occupation of such premises by any other person shall be deemed to have been under, and in subordination to, the legal title, unless it appear that such premises have been held and possessed adversely to such legal title, for five years before the commencement of such action. Where adverse possession is held.

SEC. 8. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises, under claim of title, exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim, for five years, the premises so included shall be deemed to have been held adversely, except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Entry made under conveyance, etc.

SEC. 9. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or judgment, or decree, land shall be deemed to have been possessed and occupied in the following cases : Adverse possession defined.

First. Where it has been usually cultivated and improved.

Second. Where it has been protected by a substantial inclosure.

Third. Where (although not inclosed) it has been used for the supply of fuel, or of fencing timber, for the purposes of husbandry; or for the use of pasturage, or for the ordinary uses of the occupant.

Fourth. Where a known lot, or single farm, not exceeding three hundred and twenty acres in extent, has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Same.

SEC. 10. Where it shall appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon a written instrument, or a judgment, or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

Same.

SEC. 11. For the purpose of constituting an adverse possession, by a person claiming title, not founded upon a written instrument, judgment, or decree, land shall be deemed to have been possessed, and occupied, in the following cases only: *First.* Where it has been protected by a substantial inclosure. *Second.* Where it has been usually cultivated or improved.

Relation of
landlord and
tenant.

SEC. 12. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of five years from the expiration of the tenancy, or where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

Descent cast
right not
affected.

SEC. 13. The right of a person to the possession of any real property, shall not be impaired, or affected, by a descent being cast in consequence of the death of a person in possession of such property.

Disabilities.

SEC. 14. If a person entitled to commence any action for the recovery of real property, or to make an entry, or defense, founded on the title to real property, or to rents, or services, out of the same be, at the time such title shall first descend, or accrue, either: *First.* Within the age of twenty-one years, or, *Second.* Insane; or, *Third.* Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or, *Fourth.* A married woman.

SEC. 15. The time during which such disability shall continue, shall not be deemed any portion of the time in this act

limited for the commencement of such action, or the making of such entry, or defense, but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled, who shall die under such disability; but, such action shall not be commenced, or entry, or defense made, after that period.

SEC. 16. Actions, other than those for the recovery of real property, can only be commenced as follows: Within five years—An action upon a judgment, or decree, of any court of the United States, or of any State, or Territory, within the United States. Within four years—An action upon any contract, obligation, or liability, founded upon an instrument of writing, except those mentioned in the preceding section. Within three years—First. An action upon a liability created by statute, other than a penalty, or forfeiture. Second. An action for trespass upon real property. Third. An action for taking, detaining, or injuring, any goods or chattels, including actions for the specific recovery of personal property. Fourth. An action for relief, on the ground of fraud, the cause of action in such case, not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud. Within two years—First. An action upon a contract, obligation, or liability, not founded upon an instrument of writing. Second. An action against a Sheriff, Coroner, or Constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. Third. An action upon a statute for a penalty, or forfeiture, where the action is given to an individual, or to an individual and the Territory, except where the statute imposing it prescribes a different limitation. Fourth. An action for libel, slander, assault, battery, or false imprisonment. Fifth. An action upon a statute for a forfeiture, or penalty, to the people of this Territory. Sixth. An action against a Sheriff, or other officer, for the escape of a prisoner arrested or imprisoned on civil process. Seventh. An action on an open account for goods, wares, and merchandise, sold and delivered. Eighth. An action for any article charged in a store account.

SEC. 17. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

SEC. 18. An action for relief, not herein before provided for, must be commenced within four years after the cause of action shall have accrued.

SEC. 19. The limitations prescribed in this act, shall apply to actions brought in the name of the Territory, or for the ben-

Time not to run during same.

Limitations of actions other than for recovery of real property.

Action on account.

Action for relief.

Limitations, actions applied to. **SEC. 19.** The time limited for the commencement of an action shall not be extended by the absence of the plaintiff from the Territory, in the same manner as to actions by private parties.

Action, when deemed commenced.

SEC. 20. An action shall be deemed to be commenced, within the meaning of this act, when the complaint has been filed in the proper court, and summons issued and placed in the hands of the Sheriff of the county, or other person authorized to serve the same.

Absence of defendant at time cause of action accrued.

SEC. 21. If, when the cause of action shall accrue against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory; and if, after the cause of action shall have accrued, he depart the Territory, the time of his absence shall not be part of the time limited for the commencement of the action.

Limitation, when not to run.

SEC. 22. If a person entitled to bring an action, other than for the recovery of real property, except for a penalty or forfeiture, or against a Sheriff, or other officer, for an escape, be, at the time the cause of action accrued, either: First. Within the age of twenty-one years; or, Second. Insane; or, Third. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than his natural life; or, Fourth. A married woman; the time of such disability shall not be a part of the time limited for the commencement of the action.

Action by representative of deceased.

SEC. 23. If the person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

Action by alien enemy.

SEC. 24. When a person shall be an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action; *provided*, however, that nothing in this section shall be so construed as to consider any citizen or person of any State engaged in rebellion against the United States Government, as an alien.

Where judgment is reversed.

SEC. 25. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives, may commence a new action within one year after the reversal.

Action

injunction.

SEC. 26. When the commencement of one action shall be stayed, by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

SEC. 27. No person shall avail himself of a disability, unless it existed when his right of action accrued. Disability.

SEC. 28. When two or more disabilities co-exist, at the time the right of action accrues, the limitation shall not attach until they all be removed. Where disabilities co-exist.

SEC. 29. The preceding sections of this act shall not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created. Action to recover penalty against corporators.

SEC. 30. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this statute, unless the same be contained in some writing signed by the party to be charged thereby. Acknowledgment to be in writing.

SEC. 31. Where the right of action has accrued, or shall accrue in the State of California, in the classes of cases mentioned in section fifteen of this act, the time of commencing actions shall be limited in the respective classes of cases, as prescribed in said section, but the period of limitation in such cases shall commence at the time of the accruing of such right of action in the State of California, and shall run continuously, excepting the time the party may have been absent from both this Territory and State of California. A right of action shall be deemed to have accrued on a judgment at the time of its rendition.—[Amended. See Chap. 20.]

SEC. 32. An action upon any contract, obligation or liability for the payment of money, founded upon an instrument of writing executed out of this Territory, and out of the State of California, can only be commenced as follows: First. Within one year, when more than two, and less than five years, have elapsed since the cause of action accrued. Second. Within six months, when more than five years have elapsed since the cause of action accrued. Action on instrument executed out of Territory.

SEC. 33. When the cause of action has arisen in any other State or Territory of the United States, or in a foreign country, and by the laws thereof an action cannot there be maintained against a person, by reason of the lapse of time, no action thereon shall be maintained against him in this Territory. When action barred.

SEC. 34. An action upon any judgment, contract, obligation or liability, for the payment of money or damages obtained, executed or made out of this Territory and the State of California, can only be commenced within two years from the time the cause of action shall accrue. Action on judgment out of Territory.

SEC. 34. This act to take effect on and after the second day of December, A. D. one thousand eight hundred and sixty-one.

CHAP. XIII.—*An Act to prevent the Driving of Stock from their Ranges.*

[Approved November 21, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Stock not to
be driven
from range.

SECTION 1. That no person shall be permitted to lead, drive, or in any manner remove, any horse, mare, colt, jack, jenny, mule, or any head of neat cattle, or hog, sheep, goat, or any number of these animals, the same being the property of another person, from the range on which they are permitted to run in common, without the consent of the owner thereof first had and obtained; *provided*, the owner of any such animals, as aforesaid finding the same running on the herd grounds or commons, with other animals of the same, may be permitted to drive his own animal or animals, together with such other animals as he cannot conveniently separate from his own, to the nearest and most convenient corral, or other place for separating his own from other animals, if he, in such case, immediately, with all convenient speed, drive all such animals, not belonging to himself, back to the herd ground from which he brought such animals.

Exceptions.

Penalty for
violation.

SEC. 2. Any person violating the provisions of the foregoing section, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punishable by a fine of not less than twenty, nor exceeding five hundred dollars, or imprisonment not exceeding six months, nor less than thirty days, or both such fine and imprisonment, discretionary with the court having jurisdiction of the same.

CHAP. XIV.—*An Act relating to Wild Game and Fish.*

[Approved November 21, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That it shall be unlawful to catch, or to attempt to catch fish, in any of the lakes, rivers, creeks, streams, or waters, within the Territory of Nevada, by any means of any drag or drags, or any kind of a net, or any fish basket, or pot, pond or weir, or by any poison, or by any deleterious substance whatsoever, or by obstructing, in any manner, the natural transit of fish in any of the waters of the Territory of Nevada.

Small birds.

SEC. 2. It shall be unlawful for any person or persons, at any time to kill or injure, or to pursue with such intent, any

sparrow, blue bird, blue jay, martin, thrush, mocking bird, swallow, red breast, cat bird, quail, wren, or humming bird, or to disturb the nest or eggs of said bird.

SEC. 3. It shall be unlawful for any person or persons, at any time after the first day of April, and before the first day of September, in each year, to catch, kill or destroy, or to pursue with such intent, any grouse, sage chicken, prairie chicken, partridge, pheasant, woodcock, or any wild goose, wood duck, teal, or other ducks, brant, swan, sand-hill crane, plover, snipe, curlew, robin, dove, meadow lark, yellow hammer, or bittern, or to have in his or their possession, or to expose to sale any of the birds or game mentioned in this section, during the season when the killing, injuring, or pursuing of the same, is herein prohibited. Game birds.

SEC. 4. It shall be unlawful for any person or persons, at any time to destroy, injure or disturb the nest or eggs of any of the birds protected by this act. Nests or eggs.

SEC. 5. It shall be unlawful for any person or persons, at any time after the first day of January, and before the first day of July, in each year, to catch, kill or destroy, or to pursue with such intent, any deer, antelope, elk, mountain sheep, or goat, or to have in his possession, or to expose to sale, any of the wild game or animals mentioned in this section, during the season when the killing, injuring, or pursuing is herein prohibited; *provided*, that nothing in this act shall be so construed as to prohibit any person or persons in taking any bird, fowl, fish, or animal, at any time, for the purpose of taming the same, or for scientific purposes. Deer, antelope, elk, mountain sheep, and goat.
Exceptions.

SEC. 6. Every person or persons offending against any of the provisions of this act, and on conviction thereof, shall forfeit and pay for every such offense a penalty of not less than five dollars, with costs of suit, nor more than two hundred dollars, with costs of suit, to be recovered in a civil action in the name of the people of the United States of the Territory of Nevada, before any Justice of the Peace of the proper county; such fine, so collected, shall be paid into the county treasury, for the benefit of the common schools of the Territory of Nevada; further, that all such fines and costs shall be collected without stay of execution, and such defendants may, by order of the court, be confined within the county jail, until such fines and costs shall have been paid. Penalty.

CHAP. XV.—*An Act to establish a Seminary of Learning in Carson City.*

[Approved November 21, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Mode of incorporation.

SECTION 1. For the purpose of establishing a Seminary of Learning within Carson City, in the Territory of Nevada, and conferring corporate powers upon the same, the following shall be the mode of incorporation: Any number of persons, not exceeding five, selected by the founder or founders of this institution, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the Clerk of the District Court, a certificate in writing stating their corporate name, its objects, its property, in whatsoever it may consist, the number and names of the trustees.

Powers of trustees.

SEC. 2. When said certificate is so filed, said trustees, and their successors, shall be a body corporate with succession, and shall have power to sue and be sued, contract and be contracted with, to have and use a seal, as they may see proper; to purchase, hold, sell, and convey real, personal, and mixed property; to appoint officers, agents, and servants, for said corporation; to make all laws, rules, and by-laws; to employ a superintendent, or principal, and clothe him, or her, with full power to employ assistants, pay and discharge them, as he, or she, may see fit, and to authorize him, or her, to do any and all acts for the purpose of carrying on said school, as they may see proper. Said trustees may provide for issuing scholarships as they may see fit, and to authorize any one to sell the same for the erection of buildings, or improvements, or any other purpose; they may contract for the erection and purchase of any and all lands, houses, furniture, and supplies needed for said seminary. At any time said trustees may see fit, they may transfer all the property of said corporation to any one with whom they may contract, making suitable provision for the debts of said corporation, and thereupon it shall be dissolved.

Liabilities of trustees.

SEC. 3. The total amount of the debts of this corporation shall never exceed its property, and if they should, after exhausting the corporate property, the trustees, in whose term said debts were contracted, shall be personally liable therefor.

May be dissolved.

No banking privilege is hereby conveyed. But one seminary shall organize under this act. Said corporation may, at any time, be dissolved, by paying up its debts, and entering with the Clerk of the District Court notice of said dissolution.

CHAP. XVI.—*An Act for Securing Liens to Mechanics and others.*

[Approved November 21, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows :

SECTION 1. All artisans, builders, mechanics, lumber merchants, and all other persons performing labor, or furnishing materials, to the amount of twenty-five dollars, for the construction or repairing of any building or other superstructure, shall have a lien on such building or superstructure for the work and labor done, or material furnished, by each respectively.

Who entitled
to lien on
buildings.

SEC. 2. Every person wishing to avail himself of the benefits of this act, shall file in the County Clerk's office of the county in which such building or superstructure is situated, within sixty days after the completion of such building or superstructure, a just and true account of the demands due him after deducting all proper credits and offsets, and shall verify such account by his own oath, or the oath of some other person, and shall also file at the same time a correct description of the property to be charged with said lien. If such lien is claimed by a sub-contractor, journeyman, or any other person except the contractor performing labor or furnishing materials, the account aforesaid shall be filed within thirty days after the work was done, or the materials were furnished by him, and within five days after the filing of said account as aforesaid, he shall serve a copy thereof on the owner of such building or superstructure, or the agent of such owner, if the latter reside out of the county in which such building or superstructure is situated, by delivering the same to him personally, or by leaving it at his usual place of residence. If such owner do not reside within the county, and have no agent therein, service of the copy aforesaid may be made by posting the same in a conspicuous place on the building or superstructure to be charged with such lien.

Duty of
person
wishing to
assert lien.

Notice
to be given.

SEC. 3. Every sub-contractor, journeyman, laborer, or other person performing labor, or furnishing materials, shall, under the provisions of this act, have a valid lien upon the building or superstructure on which such labor was performed, or for which such materials were furnished, regardless of the claims of the contractor against the owner of such building or superstructure; but if any money be due, or is to become due, under the contract from said owner to said contractor, on being served with a notice by a sub-contractor, as provided in the last preceding section, said owner may withhold out of the first money due, or to become due under the contract, a sufficient sum to cover the lien claimed by such sub-contractor,

Laborers'
liens,
regardless of
contractors'
claims.

Owner may
reserve pay
of contractor
in certain
cases.

Sub-con-
tractors may
sue and
recover.

Certain liens
to be first
satisfied.

Land
on which
building is
erected
subject to
lien.

Preferred
liens.

Account and
notice to be
recorded.

Limitation.

journeyman, laborer, or other person performing labor or furnishing materials, until the validity thereof shall have been established by proper legal proceedings, if the same be contested; and if so established, the amount thereof shall be a valid offset to that extent in favor of the owner against the contractor. And after such notice shall have been properly served upon such owner or owners, in case of failure to comply with the provisions of this section, then such sub-contractors shall have power to sue and recover from such owner or owners whatever amount he may have lost by such failure. No attachment served on the funds in the hands of the owner of such building or superstructure, for claims other than expressed in this act, shall lie against the liens created by this act, nor shall such owner be held or legally bound to answer such attachment until all claims under the contract, or liens created by this act, shall first be satisfied.

SEC. 4. The land upon which any building or superstructure shall be erected, together with a convenient space around the same, or so much as may be necessary for the convenient use and occupation of the premises, shall also be subject to the liens created by this act, if, at the time the labor was commenced, or the first of the materials were furnished, the land belonged to the person who caused the said building or superstructure to be erected; but if such person owned less than a fee simple estate in said land, then only his interest therein shall be subject to such lien, and the liens created by this act shall be preferred to every other lien or incumbrance which shall have attached upon said property subsequent to the time at which the work was commenced, or the first of the materials were furnished, and also to all mortgages and other incumbrances unrecorded at the time such work was commenced, or the first of such materials were furnished; but nothing herein contained shall be construed as impairing any valid incumbrance upon the said land, duly made and recorded before such work was commenced, or the first of such materials were furnished.

SEC. 5. The account required to be filed by the second section of this act, shall specify that it is the intention of the holder thereof to claim a lien upon the premises sought to be charged therewith, and it shall be the duty of the County Clerk to file and record such notice and account in a separate book provided for the purpose, and from the time of such filing, all persons shall be deemed to have notice thereof.

SEC. 6. No such lien shall bind any building or superstructure for a longer period than six months after filing the same, unless suit be brought in a proper court within that time to enforce the same, or, if a credit be given, then within six months after the expiration of the credit; but no lien shall be continued in force for a longer time than two years from the time the

work is completed, or the materials furnished, by any agreement to give credit.

SEC. 7. Said liens may be enforced by suit in any court of competent jurisdiction, on setting forth in the complaint the particulars of such demand, with a description of the premises sought to be charged with said lien; and at the time of filing the complaint and issuing summons, the plaintiff shall cause a notice to be published, at least once a week for three consecutive weeks, in some newspaper published in the county, if there be one, and if not, then in such mode as the court shall direct, notifying all persons holding or claiming liens under the provisions of this act, on said premises, to be and appear in said court on a day specified therein, and during the regular term of such court, and to exhibit, then and there, the proof of said liens. On the appointed day the court shall proceed to hear and determine the said claim in a summary way, or may refer the same to a referee, to ascertain and report upon said liens, and the amount justly due thereon; and all liens not so exhibited and proved, shall be deemed to be waived in favor of those which are so exhibited. On ascertaining the whole amount of said liens with which the said premises are justly chargeable, as herein before provided, the court shall cause said premises to be sold in satisfaction of said liens and costs of suit, and any party in whose favor such judgment may be rendered, may cause the premises to be sold within the time, and in the manner provided for sales on execution at law; and if the proceeds of such sale shall not be sufficient to satisfy the whole of such liens, established as aforesaid, then the same shall be apportioned according to the rights of the several parties.

How
enforced.

Court, how
to proceed.

When
waived.

Premises
may be sold.

Apportion't
of proceeds.

SEC. 8. Nothing herein contained shall be construed to take away, or affect in any manner, any action which any such contractor, laborer, sub-contractor, or other person performing labor or furnishing materials for such building or superstructure, would otherwise have against his employer.

Right of
action not
affected.

SEC. 9. The holder of such lien, filed as aforesaid, on payment thereof, shall enter satisfaction of the same on record, at the request of any one interested in the property charged with the lien, within ten days after such request, on the payment of the costs of such entry; and on failure to enter such satisfaction, he shall forfeit and pay the party aggrieved the sum of fifty dollars per day until such satisfaction shall be entered, to be recovered in the same manner as other debts are recovered.

Satisfaction
to be
entered.

Penalty.

SEC. 10. When any person or persons shall make an express contract in writing with the owner or owners of any lot or lots in any city or town, or with the person or persons who were, at the time of such contract, in the actual possession of such lot or lots, by himself or themselves, or tenant or tenants, under *bona fide* claim or ownership, to grade, fill in, build upon, or otherwise improve the same, or the street in front of and adjoining the same, and shall go on and complete the said

Lien for
improvements.

grading, filling in, or improving of said lot or street adjoining the same, it shall be considered as an improvement upon said lot or lots, and he or they shall have a lien upon such lot or lots for the amount contracted to be paid; and all the provisions of this act, respecting the mode of recording, securing and enforcing mechanics' liens, shall apply thereto.

Liens
for cutting
and cording
timber.

SEC. 11. When any person or persons shall make an express contract in writing with the owner or owners of any tract or tracts of land, or with the person or persons who were, at the time of such contract, in the actual and *bona fide* possession of such tract or tracts of land, by himself or themselves, or tenant or tenants, to cut and cord the timber growing or being thereon, or any portion thereof, or for the purchase of said timber, or any part thereof, to be paid for when the same shall be cut and corded, and shall go on and complete such contract, he or they shall have a lien on such wood so cut and corded for the amount contracted to be paid, and may hold, take and retain possession of said wood until such contract price shall be paid; and if not paid within the space of one month after the contract shall be completed, or work done, or purchase made, as aforesaid, then all the provisions of this act respecting the mode of surveying (securing) and enforcing mechanics' liens, shall apply thereto.

Liens for
mining.

SEC. 12. When any person or persons shall make an express contract in writing with any organized or incorporated mining company, or with the owner or owners of any lode or lodes of gold or silver bearing quartz, or of any other metal of value, or with the person or persons who were, at the time of such contract, in the actual possession of such lode or lodes, by himself or themselves, under *bona fide* claim of ownership, to cut, excavate and run a tunnel from any given point into and through said lode or lodes, or sink a shaft thereon to the depth of fifty feet or more, and shall go on and complete such contract, he or they shall have a lien upon said lode or lodes, together with the tunnel thereto cut and run, or the shaft thereto sunk, for the amount contracted to be paid; and all the provisions of this act, respecting the mode of recording, securing and enforcing mechanics' liens, shall apply thereto.

CHAP. XVII.—*An Act to audit the Claim of Henry DeGroot, and provide for the payment of the same.*

[Approved November 21, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Claim
audited.

SECTION 1. That the claim of Henry DeGroot, amounting to thirteen hundred and sixty-seven dollars (\$1,367), for ser-

vices rendered as Census Marshal of the Territory of Nevada, be, and the same is, hereby audited and allowed, as a just claim against the Government of the United States.

SEC. 2. And it is hereby ordered that the same be paid Ordered paid out of any money appropriated by Congress which by law may be applied to the payment of the same.

SEC. 3. This act to take effect from and after its passage.

CHAP. XVIII.—*An Act for the Better Observance of the Lord's Day.*

[Approved November 21, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. No person shall keep open any play-house or theater, race-ground, cock-pit, or play at any game of chance Places to be closed. for gain, or engage in any noisy amusement, on the first day of the week, commonly called Lord's Day.

SEC. 2. No judicial business shall be transacted by any court, except deliberations of a jury who have received a case Certain judicial business tolerated. on a week day, so called, and who may receive further instructions from the court, at their request, or deliver their verdict; nor any civil process be served by any certifying or attesting officer, nor any record made by any legally appointed or elected officer, upon the first day of the week, commonly called the Lord's Day; *provided*, that criminal process may issue for the apprehension of any person charged with crime, and criminal examination to be proceeded with.

SEC. 3. Any person, or persons, violating the provisions of the two preceding sections of this act, shall be punished, on conviction thereof, by a fine of not less than thirty dollars, nor more than two hundred and fifty dollars, for each offense. Penalty for violation.

SEC. 4. Justices of the Peace may have jurisdiction of all Jurisdiction. complaints arising under the aforesaid act.

SEC. 5. On complaint of any person, before a Justice of the Peace, the person or persons found guilty of any offenses Fines, how disposed of. specified in this act, shall be fined as aforesaid, to be paid to the Treasurer of the Territory, for the benefit of common schools; and the offender shall, in addition to the said fine and the costs of prosecution, give bonds, with two good and sufficient sureties, in the sum of not less than two hundred dollars, nor more than five hundred dollars, for good behavior during any time within the discretion of the court, and stand committed till the whole order is complied with, and the fine be paid.

CHAP. XIX.—*An Act Fixing the Age of Majority.*

[Approved November 21, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Lawful age SECTION 1. All male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age.

CHAP. XX.—*An Act to amend an Act entitled "An Act defining the Time of Commencing Civil Actions." Approved by the Governor on the twenty-first day of November, 1861.*

[Approved November 23, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Section thirty-one of the foregoing entitled act, is hereby amended, so as to read as follows:

Amending
Sec. 31.

Where the right of action has accrued, or shall accrue, in the State of California, in the classes of cases mentioned in section sixteen of this act, the time of commencing actions shall be limited in their respective classes of cases, as prescribed in said section; but the period of limitation in such cases, shall commence at the time of the accruing of such right of action in the State of California, and shall run continuously, excepting the time the party may have been absent from both this Territory and State of California. A right of action shall be deemed to have accrued on a judgment at the time of its rendition.

SEC. 2. This act shall take effect on and after the second day of December, A. D. one thousand eight hundred and sixty-one.

CHAP. XXI.—*An Act in relation to Common Jails, and the Prisoners thereof.*

[Approved November 25, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. There shall be built, or provided, kept and maintained, in good repair, in each county, one common jail, at the expense of the county. County Jail.

SEC. 2. The County Commissioners shall have the care of building, inspecting, and repairing such jail, and shall once, every three months, inquire into the state thereof, as respects the security thereof, treatment, and condition of the prisoners, and shall take all necessary precautions against escape, sickness, or infection. County Comm'ners to supervise.

SEC. 3. The Sheriff shall have the custody of the jail in his county, and of the prisoners therein, and shall keep the same personally, or by his deputy, for whose acts he shall be responsible, and shall furnish all necessary sustenance, bedding, clothing, fuel, and medical attendance, for the prisoners committed to his custody, and the Commissioners shall allow him, out of the county treasury, a reasonable compensation for the support of all prisoners confined on criminal process; *provided*, that the Commissioners shall, in no case, allow more than one dollar *per diem*, for boarding such prisoners. Sheriff to have custody of.
Compensat'n

SEC. 4. The Sheriff may appoint one or more jailors, who, in case of the absence or disability of the Sheriff, or during any vacancy in the office, shall have the custody of the jail, and the prisoners therein. Jailors.

SEC. 5. If any Sheriff, or jailor, shall defraud any prisoner of his allowance, or shall not allow reasonable allowance, and accommodation, he shall forfeit fifty dollars for each offense, to be recovered by an action of debt by the County Commissioners, for the use of the county. Allowance to prisoners.

SEC. 6. Every jailor, five days prior to the opening of each term of the District Court, in the district in which his county is situate, shall return to the Commissioners of his county a certified list of all the prisoners then in his custody, with the time and causes of their commitment, and the length of the term for which they were committed; and he shall, also, return to said Commissioners, within five days after the close of said term of said court, the name, and cause, and term of commitment, of every prisoner committed during said term of said court; and any jailor, who shall neglect to make such returns, for every such neglect, shall pay a fine not exceeding fifty, nor less than twenty dollars, to be imposed at the next succeeding term of said court, on information of said Commissioners of such neglect; and such fine shall go to the county. Jailor's returns to County Commissioners.
Penalty for neglect.

Convicts to
be hired out.

Earnings,
surplus of.

United Stat's
prisoners.

Inability of
prisoner to
pay fine.

Prisoners
may be
removed.

Expenses
of removal.

SEC. 7. Every Sheriff may hire out, or put to labor, any person, or persons, in his custody, who shall be convicted of the following crimes: petit larceny, grand larceny, burglary, assault and battery with intent to commit murder, bribery, perjury, and fraud, taking all necessary means to secure their safe keeping, and shall charge the earnings of said prisoners to himself for the sustenance of said prisoners. Any surplus that may accrue from such labor, shall be paid into the County Treasury.

SEC. 8. Persons may be committed, under the authority of the United States, to any jail, upon payment of the expenses of supporting such prisoners, five dollars per month to the county for the use of the jail, and all legal fees of the jailor; and the Sheriff shall receive such prisoners, and subject them to the same employment, discipline, and treatment, and be liable for any neglect of duty, as in case of other prisoners; but the county shall, in no case, be liable for any escape.

SEC. 9. Whenever any prisoner, under conviction for any criminal offense, shall be confined in jail for any inability to pay any fine, forfeiture, or costs, or to procure sureties, the District Court, upon satisfactory evidence of such inability, may, in lieu thereof, confine such person in the county jail, at the rate of two dollars per day, until the fine, forfeiture, or cost so imposed, shall have been satisfied.

SEC. 10. Whenever, from any sufficient cause, the Sheriff shall think it expedient, that the prisoners be removed from the jail, in his county, on application in writing, to the Governor of the Territory, by the Sheriff, the Governor may order said prisoners to be removed to some other jail, anywhere within the Territory, there to be detained in the same manner, and by the same process as in the jail from whence they were removed, until remanded back, by a similar process, or discharged according to law.

SEC. 11. All the expenses of removing and maintaining prisoners, incurred under the preceding section, shall be defrayed by the county from which they were so removed.

SEC. 12. All acts, and parts of acts, inconsistent with this act, are hereby repealed, and this act shall take effect from and after its passage.

CHAP. XXII.—*An Act granting to certain persons the right to construct a Railroad from the Western to the Eastern Boundary of the Territory of Nevada.*

[Approved November 25, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the right to lay out, construct, maintain, and operate a single, or double track railroad, commencing at the boundary line between the Territory of Nevada and the State of California, at a point where the same is intersected by the Truckee River, thence along and on the bank of, or near said river, following down the same in an easterly direction to a point at or near the Big Bend of said river, on the easterly side of the Washoe Mountains, thence to the eastern boundary of said Territory, is hereby granted to Leland Stanford, Charles Crocker, Collis P. Huntington, Lucius A. Booth, Mark Hopkins, Theodore D. Judah, James Bailey and Samuel Silliman, for the term and period of fifty years; *provided*, that nothing contained in this section shall be so construed as to exclude any railroad running from one point to another within the limits of this Territory; *provided*, that nothing in this act shall be so construed as to infringe upon any improvements already made, without just compensation, and in case of running through any inclosure, said Railroad Company shall immediately build good and substantial fences on either side of said road; *provided*, further, that the granting said railroad franchise shall not include any water right on any stream it may pass along side of, or cross.

Franchise.

Corporators.

Term.

Damages to be compensat'd.

SEC. 2. That the said persons herein before named, together with such other persons as they may associate with them, and their successors and assigns, shall have the right to organize themselves into a corporation, for the purpose of constructing, operating, and maintaining said railroad, under the name and style of "The Nevada Railroad Company," and such corporation shall have power—First. To have succession by such corporate name, for the period of fifty years. Second. To sue, and be sued, in any court. Third. To make and use a common seal, and alter the same at pleasure. Fourth. To fix and establish the amount of the capital stock, and the number and value of the shares thereof, and to alter the same. Fifth. To appoint such Directors, Trustees, and other officers and agents, as the business of said corporation shall require, to define their duties and liabilities, and to allow them a suitable compensation. Sixth. To make by-laws, and orders, not inconsistent with the laws of this Territory, for the management of its property, the regulation of its affairs, and the transfer of its stock.

Style of Corporation.

Powers.

SEC. 3. That the said persons herein before named, and said

Further
Powers.

Same.

Same.

Same.

corporation, shall have further power—First. To cause such examination and surveys for said railroad to be made, as may be necessary, for the selection of the most advantageous route for the railroad, and for such purposes, by their officers, agents, and employés, to enter upon the land, or waters of the public domain, or of any private person, doing no unnecessary damage; and the said corporation shall, within one year, from and after the passage of this act, be required to locate, stake, and survey the western portion of said railroad, from the State line of California to a point five miles east of the Big Bend of the Truckee River, and to file in the office of the Secretary of the Territory, a plot of such location and survey, showing the line of the road, and the places selected for depots along the same, and in case they shall fail so to do, the rights and privileges hereby granted shall be forfeited and void. Second. To receive, hold, take, and convey, by deed, or otherwise, the same as a natural person might, or could do, such voluntary grants, and donations of real estate and other property, of every description, as shall be made to them, to aid and encourage the construction, operation, maintenance, and accommodation of such railroad. Third. To lay out and construct its road with such switches and turnouts as may be required for the proper and safe conducting of said road as they may deem advisable, the same not to exceed two hundred feet wide, and to construct and maintain the same with a single or double track, with such appendages as may be deemed necessary for the convenient use of the same, and for the purpose of making embankments, excavations, ditches, tunnels, drains, culverts, or otherwise; and may take from the public lands in the vicinity of said railroad such materials of earth, stone or wood, as may be necessary or convenient for the construction or subsequent repairs of said road. Fourth. To construct said road along or upon any stream of water, water-course, street, road, avenue or highway, or across any railway, canal, ditch or flume, which the route of the same shall intersect, cross or run along, in such a manner as to afford security to life and property. Fifth. To cross, intersect, join and unite its railroad with any other railroad, either before or after constructed, at any point upon its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings, switches and other conveniences in furtherance of the object of such connections. Sixth. To purchase lands, timber, stone, gravel, and other materials to be used in the construction, maintenance and working of its road, and its depots, shops, and other buildings necessary and proper for the use and convenience of its road. Seventh. To receive, by purchase, donation or otherwise, any lands or other property of any description, and to hold, use and convey the same as they may think proper, the same as a natural person might or could do, that may be necessary or proper for the constructing, operating, or maintenance of its road, or for the erection of its

depots, turnouts, workshops, warehouses, or for any other purposes necessary or proper for their use or convenience, in order to transact the business usual for railroad companies. Eighth. To take, transport, carry and convey persons and property on their road by the force and power of steam, of animals, or any other power, or by any combination of them, and collect and receive tolls and compensation therefor. Ninth. To erect and maintain all necessary and convenient buildings, stations, depots, workshops, warehouses and fixtures, and machinery for the accommodation and use of their passengers, freight and business, and purchase and hold the lands and other property necessary therefor. Tenth. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; subject to such restrictions as may hereafter be imposed by law. Eleventh. To regulate the force and speed of their locomotives, cars, trains, or other machinery used or employed on their road, and to establish, regulate and enforce all needful and proper rules and regulations for the management of its business transactions and the working of its road. Whenever said company shall enter upon private property, the compensation to be paid therefor shall be ascertained in the following manner: Said company shall apply to a Judge of the District Court of the Territory of Nevada for the appointment of three commissioners, whose duty it shall be, at the earliest practicable time after their appointment, to proceed to examine and assess the damages which may be sustained by the several owners, or claimants, of the lands through which the road of said company is located; *provided*, that persons locating lands after the passage of this act, shall not be entitled to any indemnification as aforesaid. Either party feeling aggrieved by the decision of such commissioners, may appeal to the District Court of the district in which said land may be situated, and said appeal shall be tried in the same manner as if commenced therein.

Same.

Compensat'n
for private
property
determined.

Appeal.

SEC. 4. The said corporation shall be allowed the period of five years in which to commence the construction of said road; *provided*, the Central Pacific Railroad shall be graded from its western terminus to the eastern line of the State of California, on the Truckee River, before that period; and *provided*, further, that one half of the whole route of the said Central Pacific Railroad shall be graded within three years from the passage of this act; and in case the said Central Pacific Railroad Company fail to comply with either of the foregoing provisions of this section, then, and in that event, all the rights and privileges in this act granted, shall be forfeited and void.

CHAP. XXIII.—*An Act for the Regulation of the Telegraph, and to secure Secrecy and Fidelity in the transmission of Telegraphic Messages.*

[Approved November 25, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Contents of
messages
not to be
disclosed.

SECTION 1. If any officer, agent, operator, clerk, or employé, of any telegraph company, or any other person, shall willfully divulge to any other person than the party to whom the same is addressed, any message, received, or sent, or intended to be sent, over any telegraph line within this Territory, or the contents, substance, purport, effect, or meaning of such message, or any part thereof, or shall willfully alter any such message, by adding thereto or omitting therefrom, any word or words, figure or figures, so as to materially change the sense, purport, or meaning of such message, to the injury of the person sending, or desiring to send, the same, or to whom the same was directed, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Penalty-

False or
forged
messages.

SEC. 2. If any agent, operator, or employé, in any telegraph office, or any other person, shall knowingly and willfully send, by telegraph, to any person, or persons, any false or forged message, purporting to be from such telegraph office, or from any other person, or shall willfully deliver, or cause to be delivered, to any person, any such message, falsely purporting to have been received by telegraph; or if any person, or persons, shall furnish, or conspire to furnish, or cause to be furnished, to any such agent, operator, or employé, to be so sent by telegraph, or to be so delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud, any individual, partnership, or corporation, or the public, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both fine and imprisonment, in the discretion of the court.

Penalty.

Use of
information
in private
messages.

SEC. 3. If any agent, operator, or employé, in any telegraph office, shall in any way use or appropriate any information derived by him from any private message, or messages, passing through his hands and addressed to any other person, or persons, or in any other manner acquired by him by reason of his trust as such agent, operator, or employé, or shall trade or speculate upon any such information so obtained, or in any manner turn, or attempt to turn, the same to his own account,

profit, or advantage, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall also be liable, in treble damages, to the party aggrieved, for all loss or injury sustained by reason of such wrongful act. Penalty.

SEC. 4. If any agent, operator, or employé, in any telegraph office, shall unreasonably and willfully neglect, or refuse, to send any message that may have been received at such office for transmission, or shall willfully postpone the same out of its order, or shall unreasonably and willfully refuse, or neglect, to deliver any message received by telegraph, such agent, operator, or employé, so offending, shall be deemed guilty of a misdemeanor, and may be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; *provided*, that nothing herein contained shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon shall have been paid or tendered; nor to require the sending, receiving, or delivery, of any message, counseling, aiding, abetting, or encouraging treason against the Government of the United States, or of this Territory, or other resistance to lawful authority, or of any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal, or person accused of crime. Willful neglect or delay of messages.
Penalty.
Treasonable messages.

SEC. 5. If any person, not connected with any telegraph office, shall, without the authority or consent of the person or persons to whom the same may be directed, willfully and unlawfully open any sealed envelope, inclosing a telegraphic message, and addressed to any other person or persons, with the purpose of learning the contents of such message, or shall fraudulently personate or represent any other person or persons, and thereby procure to be delivered to himself, any telegraphic message, addressed to such other person or persons, with the intent to use, destroy, or detain the same, from the person or persons entitled to receive such message, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable, in treble damages, to the party injured, for all loss and damage sustained by reason of such wrongful act. Opening sealed messages.
Penalty.

SEC. 6. If any person, not connected with any telegraph company, shall, by means of any machine, instrument or contrivance, or, in any other manner, willfully and fraudulently read, or attempt to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, Information by attaching machine to wires.

Penalty.

or shall willfully and fraudulently, or clandestinely learn, or attempt to learn, the contents or meaning of any message, whilst the same is in any telegraph office, or is being received thereat, or sent therefrom, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Attempt to bribe.

SEC. 7. If any person shall, by the payment or promise of any bribe, inducement, or reward, procure, or attempt to procure, any telegraph agent, operator, or employé, to disclose any private message, or the contents, purport, substance, or meaning thereof, or shall offer to any such agent, operator, or employé, any bribe, compensation, or reward, for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employé, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court.

Penalty.

Injury to line.

SEC. 8. If any person shall willfully cut, break, or throw down, any telegraph pole; or any tree or other object used as a telegraph pole, in any line of telegraph, or shall willfully break, displace or injure, any insulator in use in any telegraph line, or shall willfully cut, break, or remove from its insulators, any wire used as a telegraph line, or shall, in any other manner, willfully injure, molest, or destroy, any property or materials appertaining to any telegraph line, or belonging to any telegraph company, or shall willfully interfere with the use of any telegraph line, or obstruct or postpone the transmission of any telegraphic message over the same, or procure or advise any such injury, interference, or obstruction, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable to the telegraph company whose property is injured, in a sum equal to one hundred times the amount of actual damages sustained thereby.

Penalty.

Communications, how deemed.

SEC. 9. Contracts made by telegraph shall be deemed to be contracts in writing, and all communications sent by telegraph, and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing.

Service of warrants authorized.

SEC. 10. Whenever any person or persons shall have been charged, on oath, with any public offense, and a warrant shall have been issued for the arrest of such person or persons, the magistrate issuing such warrant, or any Justice of the Supreme Court, or any Judge of a District or Probate Court in this Territory, may indorse upon said warrant of arrest, an order

signed by him, and authorizing the service of said warrant by telegraph, and thereupon such warrant of arrest and order, may be sent by telegraph to any Marshal, Sheriff, Constable, or Policeman in this Territory, and upon the receipt of the telegraphic copy thereof, by any such officer, he shall have the same authority, and be under the same obligation to arrest, take into custody, and detain the said accused person or persons, as if the said original warrant of arrest had been placed in his hands; and the said accused person or persons shall be subject to the same restraint, and entitled to the same rights, and shall be treated, in all respects whatever, in the same manner as if he, she, or they had been arrested under the said original warrant; and the said telegraphic copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original; but no such order shall be made by any officer, unless, in the judgment of such officer, there is probable cause to believe the said accused person or persons guilty of the offense charged; *provided*, that the making of such order by any officer as aforesaid, shall be *prima facie* evidence of the regularity of the proceedings prior thereto; and *provided*, further, that the original warrant of arrest, and order, or a copy thereof, certified by the officer making such order, shall be preserved in the telegraph office from which the same is sent.

To have same force as original warrants.

SEC. 11. Any writ or order issued out of any court, in any civil suit or proceeding, and all other papers requiring service, may be transmitted by telegraph for service in any part of this Territory, and the telegraphic copy of such writ or order, and papers so transmitted, may be served or executed by the officer or person to whom the same shall have been so sent for that purpose, and returned by him in the same manner, and with the same force and effect, in all respects whatsoever, as the original of such writ, or order, or papers might be, if delivered to such officer or person, and the officer or person serving or executing the same, shall have the same authority, and be subject to the same liabilities, as if the said copy were the original; *provided*, that, the more effectually to guard against fraud or mistake, the said original writ or order shall also be filed in the court from which the same shall have been issued, and a certified copy thereof shall be preserved in the office of the telegraph company from which the same shall have been sent.

Writs or orders of courts, by telegraph, valid.

Originals to be filed.

SEC. 12. The right is hereby granted to the California State Telegraph Company, and the Overland Telegraph Company, corporations formed under the laws of the State of California, and doing business within the Territory of Nevada, to acquire, own and enjoy, and to dispose of, any and all property, real or personal, rights and franchises, within the limits of said Territory, as may be proper or convenient for the transaction of their business, and for effectually carrying out the objects and purposes of said corporations, as fully and completely

California and Overl'nd telegraph companies.

as if said Companies had been duly incorporated under the laws of this Territory ; hereby conferring upon said Companies, severally, as ample power to do and transact business and maintain their rights in all courts and places within this Territory, as is, or may be possessed by domestic corporations, or natural persons.

Messages
to be
transmitted
in regular
order.

SEC. 13. It shall be the duty of any Telegraph Company doing business in this Territory, to transmit all dispatches in the order in which they may be received, under the penalty of one hundred dollars, to be recovered, with costs of suit, by the person or persons whose dispatch is postponed out of its order ; *provided*, that communications to and from public officers, on official business, may have precedence over all other communications ; and *provided*, also, that intelligence of general and public interest may be transmitted for publication out of its order.

SEC. 14. This act shall take effect immediately.

CHAP. XXIV.—*An Act to Create Counties, and Establishing the Boundaries thereof.*

[Approved November 25, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows :

Esmeralda
County.

SECTION 1. There shall be a county, to be known as Esmeralda County, to include all that part of the Territory within the boundaries described as follows : Beginning at a point where the thirty-seventh degree of north latitude intersects the one hundred and sixteenth meridian, and running west along said thirty-seventh degree, to the California line ; thence, along said line, in a north-westerly direction, to the summit of the divide, between the east and west forks of Walker River ; thence, along said divide, in a northerly direction, to the head waters of Desert Creek ; thence, following down the middle of said creek, to a point where it debouches from the mountain ; thence, following the base of the mountain, to the west branch of Walker River ; thence, across said river, to the base of the mountain ; thence, following the base of the mountain in a direct line, as near as may be, to Mason's Ranch ; thence, due east to the one hundred and sixteenth meridian ; thence, south along said meridian, to place of beginning.

Douglas
County.

SEC. 2. There shall be a county, to be known as Douglas County, to include all that part of the Territory within the boundaries described, as follows : Beginning at Mason's Ranch, on Walker River, and running westerly, in a straight line, to

the mouth of Clear Creek; thence, along the middle of said creek, to its source; thence, due west to the California line; thence, south, and south-easterly along said line, to the western boundary of Esmeralda County; thence, northerly along said boundary, to the place of beginning.

SEC. 3. There shall be a county, to be known as Ormsby County, to include all that part of the Territory within the boundaries described, as follows: Beginning at the north-western corner of Douglas County, and running easterly along the north boundary thereof, to a point where it crosses Eldorado Cañon; thence, down the center of said cañon, to a point thereon due east of Brown and Company's dam, on Carson River; thence, in a westerly direction, crossing Carson River at said dam; thence, to the Half Way House, between Carson and Silver City; thence, north-westerly, to the summit of the mountains east of Washoe Lake; thence, in a westerly course along said summit, to the tops of the Sierras; thence, due west, to the California line; thence, south, along said line to the place of beginning.

Ormsby
County.

SEC. 4. There shall be a county, to be known as Washoe County, to include all that part of the Territory within the boundaries described, as follows: Beginning at the north-west corner of Ormsby County, and running easterly along the northern boundary of said county, to the summit of the mountains east of Washoe Lake; thence, in a northerly course, along the summit of said mountains, to the lower end of the Big Meadows, on Truckee River; thence, down said river, to its lower crossing; thence, east, along the Immigrant Road to the summit of the mountains lying east of said river; thence, north, on the main summit of said mountains, to a point from which, running direct west, would intersect the Truckee River at its mouth in Pyramid Lake; thence, due west, to the California line; thence, south, to the place of beginning.

Washoe
County.

SEC. 5. There shall be a county, to be known as Lyon County, to include all that part of the Territory within the boundaries described, as follows: Beginning at the south-east corner of Washoe County; thence, following the north line of Ormsby County in a south-easterly direction, to the Half Way House, between Silver City and Carson City; thence, following the said line of Ormsby County to Douglas County; thence, following the northerly boundary of Douglas County to the one hundred and nineteenth meridian of west longitude; thence, north, five miles; thence, by direct line, north-westerly, to a point on Carson River, one mile below Reed's Station; thence, north three miles; thence, westerly by a direct line, to the southern boundary of the Gold Hill Mining District, but running so as to include in this county the Devil's Gate Toll House; thence, continuing westerly in the same course, to the eastern boundary of Washoe County, and thence, southerly, along the eastern boundary of said county, to the place of beginning.

Lyon
County.

Storey
County.

SEC. 6. There shall be a county, to be known as Storey County, to include all that part of the Territory within the boundaries described, as follows: Beginning at the north-western corner of Lyon County, and running thence, in an easterly direction, along the northern boundary of Lyon County, to the north-eastern corner thereof; thence, north, in a straight line, to the road leading from the lower crossing of the Truckee to the Sink of the Humboldt; thence, westerly, along said road, to the Truckee River; thence, up the middle of said river, to the eastern line of Washoe County; thence, southerly, along said line, to the place of beginning.

Lake
County.

SEC. 7. There shall be a county, to be known as Lake County, to include all that part of the Territory within the boundaries described, as follows: Beginning at the north-west corner of Washoe County, and running easterly along the northern boundary of said county to the mouth of Truckee River; thence, due east to the summit of the first range of mountains east of said river; thence, in a northerly direction, along said range, and the main granite range of mountains, to the Oregon line; thence, west, along said line, to the summit of the Sierra; thence, south, along said summit, to the place of beginning.

Humboldt
County.

SEC. 8. There shall be a county, to be known as Humboldt County, to include all that part of the Territory within the boundaries described, as follows: Beginning at the north-east corner of Storey County; thence, running easterly along the Immigrant Road leading to the Sink of the Humboldt, to the fortieth degree; thence, east, along said line, to the eastern boundary of the Territory; thence, north, along the eastern boundary, to the northern boundary of the Territory; thence, west, along said boundary line, to the north-eastern corner of Lake County; thence, south, along the boundary lines of Lake and Washoe counties, to the point of beginning.

Churchill
County.

SEC. 9. There shall be a county, to be known as Churchill County, to include all that part of the Territory within the boundaries described, as follows: Beginning at the north-east corner of Storey County, and running south, along the eastern line of said county, to the northern line of Douglas County; thence, easterly along the said northern line of Douglas County, and the northern line of Esmeralda County, to the one hundred and sixteenth meridian; thence, north, along said meridian, to the fortieth degree of north latitude; thence, west, on the said fortieth degree, to where it strikes the old Immigrant Road leading from the Sink of the Humboldt to the lower crossing of Truckee River; thence, westerly, along said road, to the point of beginning.

CHAP. XXV.—*An Act to Prohibit Gambling.*

[Approved November 25, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Every person who shall deal, play, carry on, open, or cause to be opened, or who shall conduct, either as owner or employé, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noir, or any banking game played with cards, dice, or any other device, whether the same be played for money, checks, credit, or any representative of value, shall be guilty of felony, and on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not exceeding two years, and by fine not exceeding five thousand dollars.

Games prohibited.

Penalty.

SEC. 2. Every person who shall bet, hazard, or play money checks, or anything of value against said games mentioned in the previous section, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

Betting.

Penalty.

SEC. 3. No person otherwise competent as a witness, shall be disqualified from testifying as a witness, either before a grand or petit jury, concerning the offenses mentioned in the foregoing sections, on the grounds that his testimony may criminate himself, but such testimony shall be reduced to writing, and no indictment or prosecution shall afterwards be brought against him for said offenses, concerning which he has testified as a witness.

Witnesses not liable to prosecution.

SEC. 4. The District Attorneys in the several counties of their districts, shall receive one hundred dollars for every conviction under this act, to be collected out of the property of the party so convicted.

District Attorney's fees.

SEC. 5. Every person who shall knowingly permit any of the games mentioned in the first section to be played, conducted, or dealt, in any house owned by him or her, in whole or part, or rented by him or her, in whole or part, shall be guilty of a misdemeanor, and on conviction shall be fined any sum not exceeding five thousand dollars, and imprisoned in the county jail six months.

Householders liable.

CHAP. XXVI.—*An Act for the Permanent Location of the Seat of Government at Carson City.*

[Approved November 25, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Location.

SECTION 1. The town of Carson City is hereby made and declared the permanent Seat of Government of the Territory of Nevada.

Plaza donated.

SEC. 2. The Plaza, in Carson City, bounded on the north by Musser Street, on the east by Fall Street, on the south by Second Street, and on the west by Carson Street, is hereby dedicated to the use of this Territory for the erection of public buildings.

CHAP. XXVII.—*An Act granting to certain parties the right to construct a Railroad from Aurora to certain points on the East Walker River, in the Territory of Nevada.*

[Approved November 25, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Franchise.

SECTION 1. That the right to lay out, construct, maintain and operate a single or double track railroad, commencing at some point in Aurora, in the Territory of Nevada, running thence in a northerly or northwesterly direction, to a point where it strikes the East Walker River, thence ten miles down the said river and on its bank; also, up the East Walker River fifteen miles from the point where the railroad strikes the said East Walker River; is hereby granted to P. G. Vibbard, Jno. P. Foulks, Jno. Nye, and others, for the term and period of fifty years.

Corporators.

Organization and style.

Powers.

SEC. 2. That the said persons herein before named, together with such persons as they may associate with them, and their successors and assigns, shall have the right to organize themselves into a corporation for the purpose of constructing, operating and maintaining said railroad, under the name and style of the Esmeralda and Walker River Railroad Company. And such corporation shall have power: First. To have succession, by such corporate name, for the period of fifty years; Second. To sue and be sued in any court; Third. To make and use a common seal, and alter the same at pleasure; Fourth. To fix and establish the amount of the capital stock, and the number

and value of the shares thereof, and to alter the same; Fifth. To appoint such Directors, Trustees, and other officers and agents, as the business of said corporation shall require, to define their duties and liabilities, and to allow them a suitable compensation; Sixth. To make by-laws and orders, not inconsistent with the laws of this Territory, for the management of its property, the regulation of its affairs, and the transfer of its stock.

SEC. 3. That the said persons herein before named, and said corporation, shall have further power: First. To cause such examination and surveys for said railroad to be made, as may be necessary, for the selection of the most advantageous route for the railroad, and for such purposes, by their officers, agents, and employés, to enter upon the land or waters of the public domain, or of any private person, doing no unnecessary damage, and the said corporation shall, within one year from and after the passage of this act, be required to locate, stake and survey said railroad, from its point of starting, in Aurora, to its point of intersection with the Walker River, and to file, in the office of the Secretary of the Territory, a plot of such location and survey, showing the line of the road, and the places selected for depots along the same, and in case they shall fail so to do, the rights and privileges hereby granted shall be forfeited and void; Second. To receive, hold, take, and convey by deed or otherwise, the same as a natural person might or could do, such voluntary grants and donations of real estate and other property of every description, as shall be made to them, to aid and encourage the construction, operation, maintenance and accommodation of such railroad; Third. To lay out and construct its road with such switches and turnouts as may be required for the proper and safe conducting of said road as they may deem advisable, the same not to exceed two hundred feet wide, and to construct and maintain the same with a single or double track, with such appendages as may be deemed necessary for the convenient use of the same, and for the purpose of making embankments, excavations, ditches, tunnels, culverts, or otherwise, and may take from the public lands in the vicinity of said railroad, such materials of earth, stone or wood, as may be necessary or convenient for the construction or subsequent repairs of said road; Fourth. To construct said road along or upon any stream of water, water-course, street, road, avenue or highway, or across any railway, canal, ditch or flume, which the route of the same shall intersect, cross, or run along, in such a manner as to afford security to life and property; Fifth. To cross, intersect, join and unite its railroad with any other railroad, either before or after constructed, at any point upon its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings, switches and other conveniences, in furtherance of the object of such connections; Sixth. To purchase lands, timber,

Further powers.

Further powers.

Further
powers.

stone, gravel and other materials, to be used in the construction, maintenance and working of its road and its depots, shops, and other buildings necessary and proper for the use and convenience of its road; Seventh. To receive by purchase, donation, or otherwise, any lands or other property of any description, and to hold, use and convey the same as they may think proper, the same as a natural person might or could do, that may be necessary or proper for the construction, operating or maintenance of its road, and for the erection of depots, turnouts, workshops, warehouses, or for any other purposes necessary or proper for their use and convenience, in order to transact the business usual for railroad companies; Eighth. To take, transport, carry and convey persons and property on their road by the force and power of steam, of animals, or any other power, or by any combination of them, and collect and receive tolls and compensation therefor; Ninth. To erect and maintain all necessary and convenient buildings, stations, depots, workshops, warehouses and fixtures, and machinery for the accommodation and use of their passengers, freight and business, and purchase and hold the lands and other property necessary therefor; Tenth. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensations to be paid therefor; Eleventh. To regulate the force and speed of their locomotives, cars, trains, or other machinery used or employed on their road, and to establish, regulate and enforce all needful and proper rules and regulations for the management of its business transactions and the working of its road.

CHAP. XXVIII.—*An Act concerning Crimes and Punishments.*

[Approved November 26, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows :

I.—PERSONS CAPABLE OF COMMITTING CRIMES.

Essence of
crime.

SECTION 1. In every crime, or public offense, there must be an union or joint operation of act and intention, or criminal negligence.

Intent, how
manifested.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

Of sound
mind.

SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person knew the distinction between good and evil.

SEC. 4. An infant, under the age of fourteen years, shall be deemed incapable of knowing the distinction between good and evil, unless the contrary be clearly shown. Infants incapable.

SEC. 5. Any person counseling, advising, or encouraging, an infant under the age of ten years, a lunatic, or idiot, to commit any offense, shall be prosecuted for such offense, where committed, as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising, or encouraging, as aforesaid, had he or she committed the offense directly, without the intervention of such idiot, lunatic, or infant. Counseling idiots or infants.

SEC. 6. A married woman, acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime not punishable with death; *provided*, it appear, from all the facts and circumstances of the case, that violent threats, command, or coercion, were used; and in such case, the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty. Married women acting under coercion.

SEC. 7. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance, or force, of some other person, or persons, for the purpose of causing the perpetration of an offense, in which case the person, or persons, so causing said drunkenness, for such malignant purpose, shall be considered principal, or principals, and suffer the same punishment as would have been inflicted on the person, or persons, committing the offense, if he, she, or they, had been possessed of sound reason and discretion. Drunkenness. Exception.

SEC. 8. All acts committed by misfortune, or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil design, or intention, or culpable negligence. Misfortune.

SEC. 9. A person committing a crime not punishable with death, under threats, or menaces, which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life was in danger, shall not be found guilty, and such threats, or menaces, being proved and established, the person, or persons, compelling, by such threats, or menaces, the commission of the offense, shall be considered as principal, or principals, and suffer the same punishment as if he or she had perpetrated the offense. Committed under duress.

II.—ACCESSORY.

SEC. 10. An accessory is he or she who stands by and aids, abets, or assists; or who, not being present, aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets, or assists, advises, Accessory

or encourages, shall be deemed and considered as principal, and punished accordingly.

After the fact.

SEC. 11. An accessory after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with, or found guilty of, the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined a sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime.

Penalty.

III.—WITNESS.

Injured party may witness.

SEC. 12. The party or parties injured shall in all cases be competent witnesses; the credibility of all such witnesses shall be left to the jury, as in other cases. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime, or misdemeanor, either of such persons may be sworn as a witness against another, in relation to such crime, or misdemeanor; but the testimony given by such witness shall in no instance be used against himself, in any criminal prosecution; and any person may be compelled to testify, as provided in this section.

State's evidence.

Blacks, Indians, etc.

SEC. 13. No black, or mulatto person, or Indian, or Chinese, shall be permitted to give evidence in favor of, or against, any white person. Every person who shall have one eighth part, or more, of negro blood, shall be deemed a mulatto; and every person who shall have one half of Indian blood, shall be deemed an Indian.

Affirmation sufficient.

SEC. 14. The solemn affirmation of witnesses shall be deemed sufficient. A false or corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit willful and corrupt perjury.

IV.—OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

Murder.

SEC. 15. Murder, is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice.

SEC. 16. Express malice, is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

Malice when implied.

SEC. 17. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds

Degrees of murder.

of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree; but, if such person shall be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Every person convicted of murder of the first degree shall suffer death, and every person convicted of murder of the second degree shall suffer imprisonment in the territorial prison for a term not less than ten years, and which may be extended to life. Punishment.

SEC. 18. Manslaughter, is the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or, involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection. Manslaughter.

SEC. 19. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. Same.

SEC. 20. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder. When punished as murder.

SEC. 21. Involuntary manslaughter shall consist in the killing of a human being, without any intent so to do, in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence in an unlawful manner; *provided*, that where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder. Involuntary manslaughter.

SEC. 22. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the Territorial prison, for a term not exceeding ten years. Punishment.

SEC. 23. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first. Death, within a year and day. Computat'n.

SEC. 24. If the injury be inflicted in one county, and the party die within another county, or without the Territory, the accused shall be tried in the county where the act was done, or Place of trial.

the cause of death administered. If the party killing shall be in one county, and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

Homicide
justifiable.

SEC. 25. Justifiable homicide, is the killing of a human being in necessary self-defense, or in defense of habitation, property, or person, against one who manifestly intends, or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Justification
insufficient.

SEC. 26. A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

Killing in
self-defense.

SEC. 27. If a person kill another in self-defense, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

Officer
justified
in killing.

SEC. 28. If an officer, in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, by reason of such resistance he or she be killed, the officer or private person so killing shall be justified; *provided*, that such officer or private person previous to such killing shall have used all reasonable efforts to take the accused without success, and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

Justifiable
homicide.

SEC. 29. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Excusable,
by misad-
venture.

SEC. 30. Excusable homicide by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an ax, and the head flies off and kills a bystander, or where

a parent is moderately correcting his child, or a master his servant, or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

SEC. 31. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable, or excusable homicide. Same.

SEC. 32. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged. Same.

SEC. 33. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified, or excused in committing the homicide. Proving mitigating circumstances.

SEC. 34. If any woman shall endeavor privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof, shall suffer imprisonment in the Territorial Prison, for a term not exceeding one year; *provided*, however, that nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child. Women concealing death of bastard child.

SEC. 35. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small-sword, back-sword, or other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof shall be punished accordingly. Dueling.

SEC. 36. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the Territorial Prison, not less than two, nor more than ten years, and shall be incapable of voting or holding any office of trust or profit, under the laws of this Territory. Persons concerned disenfranchised.

SEC. 37. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, surgeon, or spectator, or who shall advise or give assistance Persons implicated to give evidence.

to such duel, shall be a competent witness against any person offending against any of the provisions of this act, and may be compelled to appear and give evidence before any Justice of the Peace, grand jury or court, in the same manner as other witnesses; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.

Posting for
not fighting.

Punishment.

Prize
fighting.

Punishment.

Drawing
deadly
weapons.

Fines, etc.

How
disposed of.

Duty of
officers,
relative to.

SEC. 38. If any person shall post another, or, in writing, or print, or orally, shall use any reproachful or contemptuous language to, or concerning, another, for not fighting a duel, or for not sending, or accepting, a challenge, he shall be imprisoned in the Territorial Prison for a term not less than six months, nor more than one year, and fined in any sum not less than five hundred, nor exceeding one thousand dollars.

SEC. 39. If any person, with or without deadly weapons, upon previous concert and agreement, fight, one with another, upon conviction thereof, they, or either, or any, of them, shall be punished by imprisonment in the Territorial Prison, for a term not less than two years, nor more than five years. Should death ensue to any person in such fight, or should any person die, from any injury received in such fight, within one year and one day, the person, or persons, causing such death, shall be deemed guilty of murder, and punished accordingly.

SEC. 40. That any person in this Territory, having, carrying, or procuring from another person, any dirk, dirk knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall, in the presence of two or more persons, draw, or exhibit, any of said deadly weapons, in a rude, angry, and threatening manner, not in necessary self-defense, or who shall, in any manner, unlawfully use the same, in any fight or quarrel, the person, or persons, so offending, upon conviction thereof, in any criminal court, in any county of this Territory, shall be fined in any sum not less than one hundred, nor more than one thousand dollars, or imprisonment in the Territorial Prison, not less than one, nor more than twelve months, at the discretion of the court, or both such fine and imprisonment, together with the costs of prosecution; which said costs shall, in all cases, be computed and collected in the same manner as costs in civil cases. All fines and forfeitures, arising under the provisions of this act, shall be paid into the county treasury of the county wherein such offense was committed, for county purposes; *provided*, nevertheless, that no Sheriff, Deputy Sheriff, Marshal, Constable, or other peace officer, shall be held to answer, under the provisions of this act, for drawing or exhibiting any of the weapons herein before mentioned, while in the lawful discharge of his or their duties. It shall be the duty of all military, civil, and peace officers, in this Territory, to be vigilant in carrying the provisions of this act into full force and effect, as well, also, as all grand juries, or grand jurors, to inquire into and make presentments, of

each and every offense, under this act, which shall come under, or within, their knowledge. It shall, and is hereby made the duty of all Judges in this Territory, to give this act in charge to the grand juries, at each term of their respective courts; and, also, to all trial juries, impaneled for the trial of any of the offenses herein before mentioned in this act.

Judges to
give act in
charge to
juries.

SEC. 41. If any person shall assault and beat another, with a cowhide, stick, or whip, having at the time, in his possession, a pistol, or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the Territorial Prison, not less than one, or more than ten years.

Assaulting
and intimi-
dation.

SEC. 42. Every person who shall willfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life. And every person who shall administer, or cause to be administered or taken, any medicinal substance, or shall use, or cause to be used, any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison, for a term not less than two years, nor more than five years; *provided*, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.

Administer-
ing poison.

Punishment.

Procuring
abortion.

Punishment.

SEC. 43. Mayhem, consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily, or of purpose, put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the Territorial prison for a term not exceeding fourteen years.

Mayhem.

Punishment.

SEC. 44. Rape, is the carnal knowledge of a female, forcibly and against her will; and a person duly convicted thereof, shall be punished by imprisonment in the Territorial prison for a term not less than five years, and which may extend to life; and any person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of twelve years, either with or without her consent, shall be adjudged guilty of the crime of rape, and be punished as before provided.

Rape.

Punishment.

SEC. 45. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by im-

Crime
against
nature.

Punishment. imprisonment in the Territorial prison, for a term not less than five years, and which may extend to life.

Assault. SEC. 46. An assault, is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another, and every person convicted thereof, shall be fined in Punishment. a sum not less than fifty, nor more than five hundred dollars, or imprisonment in the county jail not exceeding six months.

Assault with intent. SEC. 47. An assault with an intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the Territorial prison, for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the Punishment. offender to imprisonment in the Territorial prison, not less than one year, nor exceeding two years, or to a fine not less than one thousand, nor exceeding five thousand dollars, or to both such fine and imprisonment.

Assault and battery. SEC. 48. Assault and battery, is the unlawful beating of another, and a person duly convicted thereof, shall be fined in Punishment. any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year.

False imprisonment. SEC. 49. False imprisonment, is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment, shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the Territorial Punishment. prison for a term not exceeding one year.

Kidnapping. SEC. 50. Kidnapping, is the forcible abduction or stealing away of a man, woman, or child, from his or her own home, and sending or taking him or her into another country.

Punishment. SEC. 51. Every person who shall forcibly steal, take, or arrest any man, woman, or child, whether white, black, or colored, or any Indian in this Territory, and carry him or her into another county, state, or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this Territory, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping, and be punished by imprisonment in the Territorial Prison, for any term not less than one, nor more than ten years, for each person kidnapped, or attempted to be kidnapped.

Kidnapping. SEC. 52. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, or Indian, to go out of this Territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto,

colored person, or Indian, into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, or colored person, or Indian, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, shall be punished as in the next preceding section specified.

SEC. 53. Every person who shall take any woman unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, and shall be thereof convicted, shall be punished by imprisonment, in the Territorial Prison, for a term not less than two, nor more than fourteen years; and the record of such conviction shall operate as a divorce to the party so married.

Forcing
women
to marry.

Punishment.

SEC. 54. Every person who shall maliciously, forcibly, or fraudulently lead, take or carry away, or decoy, or entice away any child under the age of ten years, with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison, not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment. Every person who shall willfully poison any spring, well, or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one, nor more than ten years.

Abduction
of children.

Punishment.

Poisoning
water.

Punishment.

SEC. 55. If any person, either verbally, or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall be punished, upon conviction thereof, by imprisonment not more than one year, nor less than six months, and by a fine not exceeding five hundred, nor less than one hundred dollars.

Extortion.

Punishment.

OFFENSES AGAINST HABITATIONS AND OTHER BUILDINGS.

SEC. 56. Every person who shall willfully and maliciously burn, or cause to be burned, in the night-time, any dwelling-house in which there shall be at the time some human being, shall be deemed guilty of arson in the first degree, and upon conviction thereof, shall be punished by imprisonment not less than two years, and which may extend to life, in the Territorial prison.

Arson,
first degree.

Punishment.

SEC. 57. Every person who shall, willfully and maliciously, burn, or cause to be burned, any dwelling-house or building owned by himself, or the property of another, in the day-time, or in the night or day-time willfully burn, or cause to be burned, any kitchen, office, shop, barn, stable, storehouse, warehouse, or other building, or stacks or stocks of grain, or stand-

Arson,
sec'd degree.

ing crops, the property of any other person or corporation, or any church, meeting-house, school-house, state-house, court-house, or other public building, or any ship, vessel, boat or other watercraft, or any bridge of the value of fifty dollars or more, erected across any of the waters of this Territory, such person so offending shall be deemed guilty of arson in the second degree, and upon conviction thereof, shall be punished by imprisonment in the Territorial prison, for a term not less than one year, nor more than ten years; and should the life or lives of any person or persons, be lost in consequence of such burning, as mentioned in this and the preceding section, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

Burning
goods, etc.
deemed ar-
son, second
degree.

SEC. 58. Every person who shall willfully burn, or cause to be burned, any building, or any goods, wares, merchandize, or other chattel, which shall be at the time insured against loss or damage by fire, with intent to injure or defraud such insurer, whether the same be the property of such person, or of any other, shall, upon conviction, be adjudged guilty of arson in the second degree, and punished accordingly.

Burglary.

SEC. 59. Every person who shall in the night-time forcibly break and enter, or without force (the doors and windows being open), enter into any dwelling-house, or any other house whatever, or tent, with intent to commit murder, robbery, rape, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and upon conviction thereof, shall be punished by imprisonment in the Territorial Prison, for a term not less than one, nor more than ten years.

Punishment.

OFFENSES AGAINST PROPERTY.

Robbery.

SEC. 60. Robbery, is the felonious and violent taking of money, goods, or other valuable thing, from the person of another by force or intimidation. Every person guilty of robbery, shall be punished by imprisonment in the Territorial Prison, for a term not less than five years, and which may extend to life.

Punishment.

Grand
larceny.

SEC. 61. Every person who shall feloniously steal, take and carry away, lead, or drive away, the personal goods or property of another, of the value of fifty dollars, or more, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be punished by imprisonment in the Territorial Prison, for any term not less than one year, nor more than fourteen years.

Punishment.

Petit
larceny

SEC. 62. Every person who shall feloniously steal, take and carry, lead, or drive away, the personal goods, or property of another, under the value of fifty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof, shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Punishment.

SEC. 63. That every person who shall feloniously steal, take and carry, lead, or drive away, any dog, either of the male or female kind, belonging to another, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punished by imprisonment in the county jail, not more than six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. In any judgment rendered for a fine only, the judgment shall provide that, unless the same be paid, the defendant shall be imprisoned in the county jail, at the rate of one day for every two dollars of the fine.

Dog stealing
petit larceny

Punishment.

SEC. 64. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, receipts or certificates, or warrants for or concerning money, goods or property, due, or to become due, or to be delivered, or any public security issued by the United States, or by this Territory, and any deed or writing containing a conveyance of land, or valuable contract, in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods, of which larceny may be committed, and the money due thereon, or secured thereby and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or affected thereby, as the case may be, shall be deemed the value of the article stolen.

Bonds, notes
etc., to be
considered
personal
goods.

SEC. 65. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery, burglary, or embezzlement, knowing the same so to have been obtained, shall, upon conviction, be imprisoned in the territorial prison for a term not exceeding five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and every such person may be tried, convicted and punished, as well before as after, the trial of the principal. No person convicted of the offense specified in this section, shall be condemned to imprisonment in the territorial prison, unless the value of the thing bought or received shall amount to fifty dollars, but the same shall be punished as provided in cases of petit larceny.

Receiving
stolen goods.

Punishment.

SEC. 66. All property obtained by larceny, robbery, burglary, or embezzlement, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser, or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the property.

Stolen goods
restored to
owner.

SEC. 67. Every person bringing any goods or property into this Territory, taken by himself, or which he knew was taken by another in another Territory or State, by robbery, bur-

Goods stolen
outside of
Territory.

glary, embezzlement, or larceny, shall, upon reasonable cause being shown to a magistrate to induce him to believe that the accused has brought such goods or property into this Territory, taken in either of the ways aforesaid in another Territory or State, be committed to the county jail, to await a requisition from the Governor of the Territory or State whence such goods or property were brought as aforesaid into this Territory; *provided*, that such person shall not be detained in such custody longer than a period of eight weeks.

Marking or
branding
cattle.

Punishment.

SEC. 68. Every person who shall mark or brand, alter or deface the mark, or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the Territorial prison, for a term not less than six months, nor more than five years.

Embezzle'mt
by public
officers.

SEC. 69. Every servant, officer or person employed in any public department, station or office of the government of this Territory, or of any county of this Territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, goods, chattels, effects, book or books of record, or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money or property of whatever description it may be, being the property of the said Territory, county or corporate body, shall, on conviction thereof, be punished by imprisonment in the Territorial Prison, for a term not less than one year, nor more than ten years.

Officer
refusing
to pay over
public funds.

SEC. 70. If any officer or person who now is, or hereafter may be, intrusted by law to collect, disburse, receive, or safely keep any money or moneys, revenue or revenues, belonging to this Territory, to the School Fund of this Territory, to the School Fund of any county or township, to any county in this Territory, to any canal, turnpike or railroad fund of this Territory, or any county thereof, or to any fund for the improvement of any public road, river, creek, or other water-course bordering on or within this Territory, or to any other fund now being, or hereafter to be, established by law, for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes and orders which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping, belonging to this Territory, to any county of this Territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer, or person in office, or by the officer or person to whom such money, warrants, bills, notes, or orders ought, by law, to be paid over, or his or

their attorney or agent, duly authorized in writing, signed and acknowledged, if such demand be practicable, every such officer or person shall, on conviction thereof, be punished by imprisonment in the territorial prison, for a term not less than one year, nor more than two years; *provided*, that no person shall be imprisoned in the territorial prison, under this section, unless the money not paid over shall amount to one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section, shall forever thereafter be disqualified from holding any office of honor, trust, or profit in this Territory.

SEC. 71. That if any officer of the Territory, or of any county, city, or town, in this Territory, charged with the safe keeping, transfer, or disbursements of public moneys, shall convert to his own use, in any way whatever, or shall use by the way of investment in any kind of property or merchandise, or shall loan, with or without interest, any portion of the public moneys, bonds, or other evidences of the indebtedness of the Territory, intrusted to him for safe keeping, transfer, disbursement, or any other purpose, every such act shall be deemed and adjudged to be an embezzlement of so much of said moneys as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be felony; and the neglect or refusal to pay over on demand any public moneys in his hands, upon the presentation of a draft, or order, or warrant, drawn upon him by the proper officer, or any officer authorized by law, and signed by such officer, or to transfer or disburse any such moneys promptly, according to law, on the legal requirement of any officer authorized to make such requirement, shall be *prima facie* evidence of such conversion to his own use of the public moneys as may be in his hands. All persons advising, or knowingly and willingly participating in such embezzlement, upon being convicted thereof, before any court of this Territory of competent jurisdiction, shall, for every such offense, forfeit and pay to the Territory a fine equal to the amount embezzled, and shall suffer imprisonment in the Territorial prison, for a term not less than one year, nor more than five years.

SEC. 72. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant or certificate, for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this Territory, or of the United States, or of any State or Territory, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney or other

power, or any day-book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison, for a term not less than one year, nor more than five years.

Removing
landmarks.

SEC. 73. Every person who shall willfully or maliciously remove any monument of stone, wood, or other durable material, erected for the purpose of designating the corner, or any other point, in the boundary of any lot or tract of land, or any post or stake fixed or driven in the ground, for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks upon any tree, post, or other monument, made for the purpose of designating any point, course or line, in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not less than one hundred, nor more than two thousand dollars, or by imprisonment in the county jail, not less than one month nor more than one year.

Punishment.

Embezzle-
ment by
clerks, etc.

SEC. 74. If any clerk, apprentice, or servant, or other person, whether bound or hired, to whom any money, or goods, or chattels, or other property, shall be intrusted by his master or employer, shall withdraw himself from his master or employer, and go away with the said money, goods, chattels, or property, or any part thereof, with the intent to steal the same, and defraud his master or employer thereof, contrary to the trust or confidence in him reposed by his said master or employer, or being in the service of his said master or employer, shall embezzle the said moneys, goods, chattels, or property, or any part thereof, or otherwise shall convert the same to his own use, with like purpose to steal the same, every such person so offending shall be punished in the manner prescribed by law, for feloniously stealing property of the value of the articles so taken, embezzled or converted.

Punishment.

Conversion
of goods
by bailee.

SEC. 75. If any bailee of any money, goods, or property, shall convert the same to his own use, with intent to steal the same, he shall be deemed guilty of grand or petit larceny, according to the amount of the money or value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

Embezzle'mt
by lodger.

SEC. 76. If any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and, on conviction, shall be punished accordingly.

FORGERY AND COUNTERFEITING.

SEC. 77. Every person who shall falsely make, alter, forge, or counterfeit any record or other authentic matter of a public nature, or any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post-note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of the money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release or discharge for any debt, account, suit, action, demand, or other thing real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note, for money or other property, or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this Territory, or not, or shall utter, publish, pass, or attempt to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this Territory, or not; every person so offending, shall be deemed guilty of forgery, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison, for a term not less than one year, nor more than fourteen years.

Certain offenses deemed.

Punishment.

SEC. 78. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this Territory, or shall pass or give in payment such counterfeit coin, or permit, cause or procure the same to be uttered or passed, with intention to defraud any person, body politic or corporation, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison, for a term not less than one year, nor more than fourteen years.

Counterfeiting coin.

Punishment.

SEC. 79. Every person who shall have in his possession,

Possessing or receiving. or receive for any other person, any counterfeit gold or silver coin or coins of the species now current, or hereafter to be current in this Territory, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison, for a term not less than one, nor more than fourteen years.

Counterfeiting stamps, labels, etc. SEC. 80. That every person who shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares, or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail, for a term not exceeding six months, or by a fine of not less than three hundred, or more than six hundred dollars.

Selling goods having forged stamps. SEC. 81. That any person who shall sell any goods, wares, or merchandise, having thereon any forged or counterfeit stamps or labels, purporting to be the stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail, for a term not exceeding six months, or by a fine of not less than three hundred, nor more than six hundred dollars.

Possessing or receiving forged instruments in writing. SEC. 82. Every person who shall have in his possession, or shall receive from any other person, any forged promissory note or notes, or bank bills, or bills for the payment of money or property, with intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this Territory, or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or bank bill, made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in this Territory, or elsewhere, shall, on conviction thereof, be punished by imprisonment in the Territorial Prison, for a term not less than one, nor more than fourteen years.

SEC. 83. Every person who shall make, pass, utter, or pub-

lish, with an intention to defraud any other person or persons, body politic or corporate, either in this territory, or elsewhere, or with the like intention shall attempt to pass, utter or publish, or shall have in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing, for the payment of money or property of some bank, corporation, copartnership, or individual, where, in fact, there shall be no such bank, copartnership, or individual in existence, the said person knowing the said bill, note, check, or instrument in writing for the payment of money or property, to be fictitious, shall be deemed guilty of forgery, and, on conviction thereof, shall be punished by imprisonment in the Territorial Prison, for a term not less than one, nor more than fourteen years.

Possessing
or passing
fictitious
papers.

Punishment.

SEC. 84. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting the coin now made current, or hereafter to be made current in this Territory, or in counterfeiting bank notes or bills, upon conviction thereof, shall be punished by imprisonment in the Territorial Prison, for a term not less than one, nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, shall be destroyed.

Making or
possessing
counterfeit
die or plate.

Punishment.

SEC. 85. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession, with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

Proof of in-
corporation.

SEC. 86. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Experts to
prove.

SEC. 87. Every person who shall fraudulently forge or counterfeit the seal of this Territory, or the seal of any court or public officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or seal of any corporation, or shall unlawfully and corruptly, and with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall willfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by imprisonment in the Territorial Prison, for a term not less than one, nor more than fourteen years.

Counterfeit-
ing seals.

Punishment.

SEC. 88. If any person shall counterfeit any kind or species of gold dust, silver, gold bullion, or bars, lumps, pieces or nuggets of gold or silver, or description whatsoever of uncoined gold or silver, currently passing in this Territory, or shall alter

Counterfeit-
ing gold
dust, etc.

or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver as aforesaid, every such person so offending, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the territorial prison, for a term not less than one year, nor more than fourteen years.

Punishment. **SEC. 89.** Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, silver, gold, bullion or bars, lumps, pieces or nuggets of gold or silver, or any description whatsoever of uncoined gold or silver currently passing in this territory, or entering in any-wise into the circulating medium of the territory, with intention to utter, put off or pass the same, or permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the Territorial Prison, for a term not less than one year, nor more than fourteen years.

Possessing
or receiving
counterfeit
gold dust,
etc.

CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE.

SEC. 90. Every person, having taken a lawful oath, or made affirmation, in any judicial proceeding, or in any other matter, where, by law, an oath or affirmation is required, who shall swear, or affirm, willfully, corruptly, and falsely, in a matter material to the issue, or point, in question, or shall suborn any other person to swear, or affirm, as aforesaid, shall be deemed guilty of perjury, or subornation of perjury (as the case may be), and, upon conviction thereof, shall be punished by imprisonment in the Territorial Prison, for any term not less than one, nor more than fourteen years.

SEC. 91. Every person who, by willful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and, upon conviction thereof, shall suffer the punishment of death.

SEC. 92. If any person, or persons, shall, directly, or indirectly, give any sum, or sums, of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security, for the payment, or delivery, of any money, present, reward, or any other thing, to obtain, or procure, the opinion, judgment, or decree, of any Judge, or Justice of the Peace, acting within this Territory, or to corrupt, induce, or influence, such Judge, or Justice of the Peace, to be more favorable to one side than to the other, in any suit, matter, or cause,

Conviction
by perjury,
deemed
murder.

Bribery of
judge, or
members of
legislative
assembly.

Perjury and
subornation
of.

Punishment.

depending or to be brought before him or them, or shall, directly, or indirectly, give any sum, or sums, of money, present, or reward, or any promise, contract, obligation, or security, for the payment, or delivery, of any money, present, or reward, or any other thing, to obtain, procure, or influence, any member of the Legislative Assembly, or to incline, induce, or influence, any such member of the Legislative Assembly, to be more favorable to one side than to the other, on any question, election, matter, or thing, pending or to be brought before the Legislature, or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation, or security, with intent and for the purpose aforesaid, and the Judge, Justice of the Peace, or member of the Legislative Assembly, who shall accept, or receive, the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by imprisonment in the Territorial Prison, for a term not less than one year, and shall be disqualified from holding any office of honor, trust, or profit, in this Territory. Punishment.

SEC. 93. If any person shall, directly, or indirectly, give any sum, or sums, of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security, for the payment of any money, present, or reward, or any other thing, to any Judge, Justice of the Peace, Sheriff, Coroner, Clerk, Constable, Jailor, Attorney General, District or County Attorney, member of the Legislative Assembly, other officer, ministerial or judicial, or Assessor (but such fees as are allowed by law), the person so giving, and the officer so receiving, any money, bribe, present, reward, promise, contract, obligation, or security, shall be deemed guilty of bribery, and, on conviction thereof, shall be punished by imprisonment in the Territorial Prison, for a term not less than one year, nor more than ten years, and shall be disqualified to hold any office of honor, trust, or profit, in this Territory. Officers receiving bribe.
Punishment.

SEC. 94. Every person who shall offer, or attempt, to bribe any member of the Legislative Assembly, Judge, Justice of the Peace, Sheriff, Coroner, Clerk, Constable, Jailor, Attorney General, District or County Attorney, or other ministerial or judicial officer, or Assessor, in any of the cases mentioned in the two preceding sections, and every member of the Legislative Assembly, Judge, Justice of the Peace, Sheriff, Coroner, Clerk, Constable, Jailor, Attorney General, District or County Attorney, or other ministerial or judicial officer, or Assessor, who shall propose, or agree, to receive a bribe, in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be imprisoned in the Territorial Prison, for a term not less than one year, nor more than five years, and shall be disqualified to hold any office of honor, trust, or profit, in this Territory. Attempting to bribe officers.
Punishment.

SEC. 95. If any Judge, Justice of the Peace, Sheriff, Cor-

Stealing,
altering, or
defacing
records.

oner, Clerk, Recorder, or other public officer, or Assessor, or any person whatsoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid, any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and willfully take off, discharge, or conceal, any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify, any document, or instrument, recorded, or any registered acknowledgment, or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever, of, or belonging to, any public office within this Territory, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the Territorial Prison, for a term not less than one, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Punishment.

Inhumanity
to prisoners.

SEC. 96. Every Sheriff, or Jailor, or person, who shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and be removed from office.

Refusing to
deliver
records.

SEC. 97. If any officer, whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned, or been legally removed from office, shall willfully and unlawfully withhold or detain from his successor, or other person entitled thereto by law, the records, papers, documents, or other writing, appertaining or belonging to his office, or mutilate, destroy, or take away the same, the person so offending shall, on conviction, be punished by imprisonment in the Territorial Prison, for a term not less than one year, nor more than ten years. The provisions of this section shall apply to any person or persons who shall have such records, documents, papers, or other writings in his, her, or their possession, and shall willfully mutilate, destroy, withhold, or detain the same as aforesaid.

Punishment.

Personating
another.

SEC. 98. Every person who shall falsely represent or personate another, and, in such assumed character, shall marry another, become bail or surety for any party, in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or of any other instrument, which, by law, may be recorded, or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable, in any event, to the payment of any debt, damages, cost, or sum of money, or his right or interest may, in any manner, be affected, shall, upon conviction, be punished by imprisonment in the Territorial Prison, not less than one year, nor exceeding two years, or by fine not exceeding five thousand dollars.

Punishment.

Personating
another.

SEC. 99. Every person who shall falsely represent or personate another, and, in such assumed character, shall receive any money, or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction,

tion, be punished in the same manner, and to the same extent, as for feloniously stealing the money or property so received.

SEC. 100. If any person shall knowingly and willfully obstruct, resist, or oppose, any sheriff, deputy sheriff, coroner, constable, marshal, policeman, or other officer of this Territory, or other person duly authorized, in serving, or attempting to serve any law process or order of any court, judge, or justice of the peace, or any other legal process whatever, or shall assault or beat any such officer or person duly authorized in serving, or executing, or attempting to serve or execute, any order or process as aforesaid, or for having served, or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and punished [imprisoned] in the Territorial Prison for a term not less than one year, nor exceeding five years; *provided*, any officer or person whatsoever, that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Obstructing
officers in
service of
process.

Punishment.

SEC. 101. If any person or persons shall set at liberty, or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the Territorial Prison, for a term not less than one year, nor more than fourteen years; and, if any person or persons shall set at liberty, or rescue any person who shall have been found guilty, or convicted of a crime, the punishment of which is imprisonment in the Territorial Prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty, or rescued.

Releasing
prisoner
after conviction.

Punishment.

SEC. 102. If any person shall set at liberty, or rescue any person who, before conviction, stands charged or committed for any capital offense, or any crime punishable in the territorial prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the territorial prison, not less than one, nor exceeding ten years; and, if the person rescued, or set at liberty, stands charged, committed, or convicted of any misdemeanor or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue, or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued, or set at liberty, if he or she had been found guilty.

Releasing
prisoners
before conviction.

Punishment

SEC. 103. If any sheriff, deputy sheriff, or jailor, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the Territorial

Escape,
voluntarily
permitting it

Punishment

prison, for a term not less than one year, nor exceeding ten years, and fined in a sum not exceeding ten thousand dollars.

Aiding
escape.

SEC. 104. If any person shall carry to any convict imprisoned, or in custody, or into any county jail, or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisoned in the Territorial prison, not less than one year, nor exceeding five years.

Punishment.

Releasing
prisoner on
civil process.

SEC. 105. If any person, or persons, shall rescue another in legal custody, on civil process, such person, or persons, shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Aiding
unsuccessful
attempt to
escape.

SEC. 106. If any person shall aid, or assist, a prisoner, lawfully imprisoned or detained in custody, for any offense against this Territory, or who shall be lawfully confined, by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey, or cause to be delivered, to such prisoner, any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape, or attempt to escape, be actually made) shall, on conviction, be punished by fine not exceeding five thousand dollars, and imprisoned in the Territorial Prison, not less than one year, nor exceeding five years.

Punishment.

Officer
permitting
escape before
conviction.

SEC. 107. If any Sheriff, Coroner, Jailor, Keeper of a Prison, Constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer, or permit, such prisoner to escape, or go at large, every such officer or person so offending, shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the Territorial Prison, not less than one year, nor exceeding five years; *provided*, that if such person be in custody, charged with murder, or other capital offense, then such officer or person, suffering or permitting such escape, shall be punished by imprisonment in the Territorial Prison, for any term not less than one year, nor more than ten years. A negligent escape of a person, charged with a criminal offense, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and he shall be imprisoned in the Territorial Prison, for a term not less than one year, nor exceeding five years, or shall be fined in a sum not less than one thousand, nor exceeding five thousand dollars.

Punishment.

Officer
refusing
to receive,
or arrest.

SEC. 108. If any Sheriff, Coroner, Keeper of a Jail, Constable, or other officer, shall willfully refuse to receive or arrest any person charged with criminal offense, such Sheriff, Coroner, Jailor, Constable, or other officer, so offending, shall, on conviction, be fined in any sum not less than one thousand, nor

exceeding five thousand dollars, and imprisoned in the Territorial Prison not exceeding five years. Punishment.

SEC. 109. Every person having a knowledge of the actual commission of any offense, punishable by imprisonment in a county jail, or by fine, or of any misdemeanor, or violation of any statute, for which any pecuniary or other penalty is, or shall be, prescribed, who shall take any money, property, gratuity, or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offense or misdemeanor, [or] to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months; *provided*, that this section shall not apply to those offenses which may lawfully be compromised by leave of the court. Compromising offenses.
Punishment.

SEC. 110. If two or more persons shall conspire, either to commit any offense, or falsely and maliciously to indict another for any offense, or to procure another to be charged or arrested for any such offense, or falsely to move or maintain any suit, or to cheat or defraud any person of any property, by any means which, if executed, would amount to a cheat, or to obtain money or property by false pretenses; or to cheat or defraud any person of any property, by any means which are in themselves criminal; or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or due administration of the laws; they shall, on conviction, be punished by imprisonment in the county jail, not more than six months, or by a fine not more than one thousand dollars; *provided*, that it shall not be necessary to procure conviction under this section, to prove any overt act done in pursuance of such conspiracy. Conspiring to commit offense.
Punishment.

SEC. 111. If any person shall willfully take upon himself to exercise or officiate in any office or place of another, in this Territory, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding one thousand dollars. Unauthorized action of one for another.

SEC. 112. Embracery, is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, and the like. Every embracer, who shall directly or indirectly promise, or offer to any juror, or procure any juror to take money, or any other bribe, present, or reward, or any contract, obligation, or security for the payment or delivery of any money, present, reward, or any other thing, or shall corruptly influence, or attempt to influence, any juror, shall, on conviction, be fined in a sum not exceeding five thousand dollars, or imprisoned in the Territorial prison, not less than one year, nor exceeding five years; and any juror, convicted of taking any money, present, reward, or any other thing, or corruptly being influ- Embracery.
Punishment.

enced, as aforesaid, shall suffer the like imprisonment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the trial jurors.

Extortion. SEC. 113. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer, or assessor, of this Territory, ministerial or judicial, shall willfully receive or take any fee or reward, to do or execute his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall willfully or corruptly ask or demand, as a condition precedent to the performances of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending, shall be deemed guilty of extortion, and, on conviction, shall be fined in any sum not less than two hundred dollars, nor more than one thousand, and, on conviction, removed from office.

Purchasing judgments. SEC. 114. If any justice of the peace, or constable, of the same township, shall, directly or indirectly, purchase any judgment, or part thereof, on the docket of such justice, or any docket in his possession, he shall, upon conviction thereof, be fined for each offense, in any sum not less than one hundred dollars, nor more than one thousand dollars.

Selling office. SEC. 115. Every person holding, or exercising any office, under the laws or constitution of this Territory, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding five thousand dollars, and shall forfeit his office, and be disabled from holding such office; and every person who shall give, or make any agreement to give, any reward or gratuity, in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not less than five hundred, nor exceeding five thousand dollars.

Sending threatening letter. SEC. 116. If any person shall, knowingly, send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his house, or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his infirmities, though no money, goods, chattels, or other valuable things be extorted, such person so offending, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding five hundred dollars, and shall be imprisoned in the county jail, not exceeding

part of such letter, without the authority of the writer thereof, or of the person to whom the same shall be addressed, knowing the same to have been opened, shall, upon conviction, be punished by a fine not exceeding one thousand dollars. Punishment

OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

SEC. 118. If any person shall, maliciously and willfully, disturb the peace or quiet of any neighborhood, or family, by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight, or fighting, every person convicted thereof, shall be fined in a sum not exceeding two hundred dollars, or imprisonment in the county jail not more than two months. Disturbing the peace.
Punishment.

SEC. 119. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse, on being desired or commanded so to do by a judge, justice of the peace, sheriff, coroner, constable, or other public officer, the persons so offending shall, on conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisonment in the county jail not more than six months. Assembling to disturb the peace.
Punishment.

SEC. 120. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this territory, the persons so offending, shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the county jail not more than one month. Affray.
Punishment.

SEC. 121. If two or more persons shall assemble together, to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assembly, and, upon conviction thereof, shall be severally fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months. Unlawful assemblage.
Punishment.

SEC. 122. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a rout, and, on conviction, shall be severally fined in a sum not exceeding five hundred dollars, or imprisonment in the county jail not more than six months; and if two or more persons shall actually do an unlawful act of violence, either with, or without a common cause of quarrel, or even do a lawful act, in a violent, tumultuous and illegal manner, they shall be deemed guilty of a riot, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each, or by imprisonment in the county jail, for any term of time not exceeding six months, or by such fine and imprisonment. Rout.
Riot.
Punishment.

SEC. 123. Every person who shall willfully disrupt, or disturb any congregation, or assembly of people met for religious worship, by making a noise, or a disturbance, or any other behavior, Disrupting religious assembly.

Punishment. Every person who shall be present at any religious worship, or so near the same as to disturb the order or solemnity of the meeting, or to dare, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months.

Liquor selling at camp meetings. **Punishment.** SEC. 124. Every person who shall erect, or keep a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or fermented liquors, or any drink of which wine, spirituous, or fermented liquors, form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars.

Officers not preventing duel. **Punishment.** SEC. 125. If any judge, justice of the peace, sheriff, or other officer, bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

Libel. **Punishment.** SEC. 126. A libel, is a malicious defamation, expressed either by printing, or by signs, or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt, or ridicule; every person, whether the writer, or the publisher, convicted of the offense, shall be fined in a sum not exceeding five thousand dollars, or imprisonment in the county jail, not exceeding six months. In all prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motive and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.

OFFENSES AGAINST PUBLIC MORALITY, HEALTH, AND POLICE.

Bigamy. SEC. 127. Bigamy, consists in the having of two wives, or two husbands, at one and the same time, knowing that the former husband or wife is still alive. If any person or persons, within this Territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and be imprisoned in the territorial prison not less than one year, nor more than five years. It shall not be necessary to prove either of the said marriages by the register, and certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall

have taken place without this Territory, cohabitation in this Territory, after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons, whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained, shall extend to any person that is, or shall be, at the time of such second marriage, divorced by lawful authority from the bonds of such former marriage, or to any person, where the former marriage hath been, by lawful authority, declared void.

SEC. 128. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not less than one thousand dollars, or imprisoned in the territorial prison not less than one, nor more than two years.

Knowingly
marrying
a married
person.

SEC. 129. Persons being within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the territorial prison, not less than one, nor exceeding ten years.

Incest.

Punishment.

SEC. 130. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any city, town, or village, or any public bridge or causeway, mill-race, mill-dam, or ditch, or public river or stream, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall, in any-wise, pollute, or obstruct any water-course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, city, town, village, or neighborhood thereabouts, every person so offending, shall, upon conviction, be fined not exceeding one thousand dollars, and every such nuisance may, by order of the court before whom the conviction may take place, or of the district court, be removed and abated by the sheriff of the county.

Obstructing
highway, or
stream.

Punishment.

SEC. 131. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any poisonous or adulterated drink or liquors, every person so offending shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months.

Selling un-
wholesome
provisions.

Punishment.

SEC. 132. If any person shall intentionally deface, obliterate, tear down, or destroy, in whole or in part, any copy or transcript, or extract from, or of, any law of the United States, or of this territory, or any proclamation, advertisement, or notification, set up at any place in this territory, by authority of any

Defacing or
tearing down
advertisem's.

Punishment. law of the United States, or of this territory, or by order of any court, such person, on conviction, shall be fined not more than one hundred dollars, nor less than twenty dollars, or be imprisoned in the county jail not more than one month; *provided*, that this section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, notification, advertisement, or order, after the time for which the same was by law to remain set up, shall have expired.

Possessing implements for burglary. SEC. 133. If any person shall be found having upon him or her any picklock, crow-key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any money, goods and chattels, every person so offending, shall, on conviction thereof, be imprisoned in the territorial prison, not less than one year, nor more than five years; and, if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

Carrying weapons with intent.

Refusing to join posse. SEC. 134. Every male person, above eighteen years of age, who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may be issued any process, or by neglecting to aid and assist in retaking any person or persons who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty, nor more than one thousand dollars, or shall be imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment.

Punishment.

OFFENSES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

Fraudulent conveyance. SEC. 135. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in, use, avow, maintain, justify, or defend the same, or any of them, as true and done, had or made, in

good faith, or upon good consideration, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail not less than six months. Punishment.

SEC. 136. If any person, by false representations of his own wealth, or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause, or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into the possession of goods, wares, or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisonment in the county jail not more than six months. Obtaining credit by false representations.
Punishment.

SEC. 137. If any person or persons shall, knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and, on conviction, shall be fined not exceeding one thousand dollars, and imprisoned in the county jail, not more than six months, and be sentenced to restore the property so fraudulently obtained, if it can be done. False pretenses.
Punishment.

SEC. 138. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again, knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the territorial prison, not less than one year, or more than five years. Fraudulently selling.
Punishment.

SEC. 139. If any person shall knowingly sell any goods, wares, or merchandise, or any valuable thing, by false weight or measure, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and, on conviction, shall be fined not exceeding two hundred dollars, and imprisoned in the county jail not more than six months. False weights or measures.
Punishment.

SEC. 140. If any debtor shall fraudulently remove his

Removal of property to defraud. property or effects out of this territory, or shall fraudulently sell, convey, or assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the county jail, for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Punishment.

Fraudulent concealment, etc., of property.

SEC. 141. Any person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of such property or effects, with intent to hinder, delay, or defraud the person bringing such action, or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

FRAUDULENT AND MALICIOUS MISCHIEF.

Poisoning cattle. SEC. 142. Every person who shall willfully administer any poison to any cattle, or domestic animal, or maliciously expose any poisonous substance, with the intent that the same shall be taken or swallowed by any cattle or domestic animal, shall, upon conviction, be punished by imprisonment in the territorial prison, not less than one year, nor exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Injuring animals and goods. SEC. 143. Every person who shall maliciously kill, maim or wound any horse, ox, or other domestic animal belonging to another, or shall maliciously or cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be punished by fine of not more than five hundred dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment; and every person who shall willfully, unlawfully and maliciously destroy, burn, cut, or otherwise injure any goods, chattels or property, of any description whatever, belonging to another, shall, upon conviction, be punished by fine of not more than five hundred dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment.

Punishment.

Injuring dwelling-house, etc. SEC. 144. Every person who shall willfully, unlawfully, and maliciously break, destroy or injure the door or window of any dwelling-house, shop, store, or other house or building, or sever therefrom, or from any gate, fence, or inclosure, any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure, or destroy, any gate, post, railing or fence, or any part thereof, or cut down, lap, girdle, or otherwise injure or destroy any fruit, or ornamental or shade tree,

being the property of another, shall, on conviction, be fined not more than two hundred dollars, or imprisoned in the county jail, not exceeding six months. Punishment.

SEC. 145. Every person who shall willfully and maliciously burn, injure, or destroy, any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose, or set adrift any such raft, or part thereof, or shall cut, break, injure, sink, or set adrift any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail, not exceeding six months. Injuring
rafts, etc.

Punishment.

SEC. 146. Every person who shall willfully and maliciously cut, break, injure, or destroy, any bridge, mill, dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining, manufacturing, or agricultural purposes, or any embankment necessary to the same, or either of them, or shall willfully or maliciously make, or cause to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisonment in the territorial prison, not less than one year, nor more than two years, or both such fine and imprisonment. Injuring
property of
water com-
panies.

Punishment.

SEC. 147. If any person shall, willfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of the said jail, or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the territorial prison, for any term not exceeding five years, nor less than one year. Injuring
jail, etc.

Punishment.

SEC. 148. If any person or persons shall willfully and intentionally, or negligently and carelessly, set on fire, or cause or procure to be set on fire, any wood, prairies, grass, or other lands, or grounds, in this territory, every person so offending, shall, on conviction before any court of competent jurisdiction, be fined in any sum not less than two hundred, nor more than one thousand dollars, or by imprisonment in the county jail, not less than ten days, nor more than six months, or by both such fine and imprisonment, in the discretion of the jury trying the case; *provided*, that this section shall not extend to any person or persons who shall set on fire any wood, prairies, grass, or other lands adjoining their own farm, house, plantation, or inclosure, for the necessary preservation thereof from accident, or injury by fire, by giving to his, her, or their neighbors reasonable notice of such intention. Firing woods
or prairie.

Punishment.

MISCELLANEOUS OFFENSES.

Issuing pa-
per money.

Punishment.

District
attorney to
prosecute.

Vending,
without
license.

Punishment.

Jurisdiction
of offense.

Fines.

SEC. 149. If any person or persons, association, company, or corporation, shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company or corporation, or the persons forming the same, shall, for the first offense, be deemed guilty of a misdemeanor, and for each and every subsequent offense, be deemed guilty of felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this act, shall be punished, for the first offense, by imprisonment in the county jail, not more than three months, or by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second, and every subsequent offense, shall be punished by imprisonment in the territorial prison, for a term not less than one year, nor more than five years, at the discretion of the court before whom such person or persons shall be tried and convicted. It shall be the duty of the district attorney for each judicial district in the territory, to prosecute all offenses against this act, and it shall be the duty of the judges of the courts, to give this law in the charge of the grand jury, who shall inquire into and present all cases of a violation thereof.

SEC. 150. Any person or persons who shall vend, by wholesale or retail, any spirituous, or malt, or vinous liquors, or any goods, wares, or merchandise, within any county in this territory, without first obtaining a license so to do, as required by law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any court of competent jurisdiction, be fined in a sum of not less than twenty-five, nor more than two hundred dollars, for each and every offense. Any justice of the peace of the county in which such offense is charged to have been committed, shall have jurisdiction to try and determine the same. Upon the trial of any criminal action provided for by this act, the defendant shall be deemed not to have procured any such license, unless he prove the contrary to the satisfaction of the court or jury by whom the same is tried. All fines collected under this act, shall be paid into the treasury of the county in which the conviction is had.

GENERAL PROVISIONS.

Offenses.

Misdemeanors

How
punished.

SEC. 151. All offenses recognized by the common law as crimes, and not herein enumerated, shall be punished, in case of felonies, by imprisonment in the territorial prison, for a term not less than one year, nor more than five years, and in case of misdemeanors, by imprisonment in the county jail, for a term not exceeding six months, or less than one, or by fine not exceeding five hundred dollars, or by both such fine and

imprisonment; and whenever any fine is imposed for any felony or misdemeanor, whether such by statute or at common law, the party upon whom the fine is imposed, shall be committed to the county jail, when not sentenced to the territorial prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars, until such fine is paid.

SEC. 152. Until a territorial prison is provided, the county jail of each county shall be deemed the territorial prison. Territorial prison.

SEC. 153. A sentence of imprisonment in the territorial prison, for a term less than life, suspends all civil rights of the person so sentenced, during the term of imprisonment, and forfeits all public offices, and all private trusts, authority and power; and the person sentenced to such imprisonment for life, shall thereafter be deemed civilly dead. Effect of sentence of imprisonment.

SEC. 154. Where the term "person" is used in this act to designate the party whose property may be the subject of any offense, such term shall be construed to include the United States, this territory, or any other state or territory, government, or county, which may lawfully own any property within this territory, and all public and private corporations, as well as individuals. Person defined.

SEC. 155. The provisions of this act shall extend to females. Females.

SEC. 156. When any intent to injure, defraud, or cheat, is required by law to be shown, in order to constitute any offense, it shall be sufficient if such intent be to injure, defraud, or cheat the United States, this territory, or any other state, territory, or county, or the government, or any public office thereof, or any county, city, or town, or any corporation, body politic, or private individuals. Intent to injure.

SEC. 157. If any person, who has been sentenced to confinement in the territorial prison, by any court having competent authority within this territory, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or their apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the general fund. Reward for arrests.

SEC. 158. Every person who shall attempt to commit a public offense, and in such attempt shall do any act toward the commission of such offense, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows: First. If the offense so attempted to be committed, be such as is punishable by death or by imprisonment in the Territorial Prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the Territorial Prison not exceeding ten years. Second. If the offense so attempted is a misdemeanor, Attempt to commit offenses.
Punishment.

the person so convicted of such attempt shall be punishable by a fine not exceeding one half of the largest amount, or by imprisonment in the county jail or Territorial Prison, as the case may be, for a term not exceeding one half of the longest time prescribed by law, upon a conviction of the offense so attempted. Third. If the offense so attempted is a felony, not punishable by death or imprisonment, which may extend to life, the person convicted of such offense shall be punished by imprisonment in the Territorial Prison, for a term not exceeding one half the longest time which may be imposed upon a conviction of the offense so attempted.

Not to affect
pending pro-
ceedings.

SEC. 159. Nothing in this Act shall be construed to affect any criminal proceedings or prosecution now pending in any of the courts of this Territory, but the same shall be prosecuted to judgment and execution in the same manner as if the Act had not been passed. And all persons charged, or who may hereafter be charged, with crimes or misdemeanors, under the laws now in force, shall be prosecuted to the same extent that they might have been had no act on the subject been passed.

SEC. 160. This Act shall take effect from and after its passage.

CHAP. XXIX.—*An Act authorizing D. D. Kingsbury and James M. McDonald to establish and maintain a Toll Road.*

[Approved November 27, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Grant.

SECTION 1. D. D. Kingsbury and James M. McDonald, their successors and assigns, are hereby granted the right and privilege of maintaining a toll road, from the commencement of said road in Carson Valley, about one half mile south of Van Sycles' ranch and hotel, and running thence to the eastern boundary line of the State of California, over the route heretofore established by said parties, and now occupied and used by them as a toll road.

SEC. 2. The said parties shall have the right to charge and collect tolls on said road not exceeding the following rates:

Rates of toll.

Wagon and one span horses, or one yoke cattle, two dollars.

Each additional animal, twenty-five cents.

Empty teams, returning, half price.

Buggy and two horses, two dollars.

Buggy and one horse, one dollar and fifty cents.

Man on horseback, fifty cents.

Each pack animal, both ways, twenty-five cents.

Loose animals, twelve and one half cents.

SEC. 3. The said parties may also establish toll-gates at one or more points on said road, and collect tolls thereat; *provided*, the aggregate tolls so collected, shall not exceed the rates as designated in section two of this act, and said company are required to keep said road in good condition and repair; and *provided*, further, that said company shall keep a correct account of all moneys received, and pay into the territorial treasury two per cent. of the gross receipts thereof; and if it be proven, before any court of competent jurisdiction, that said company has willfully misrepresented, or kept a false account, of the receipts of said company, then this charter shall be null and void. The directors of said road shall be required to make affidavit to the gross receipts of the company once every three months, and transmit the same forthwith to the territorial treasurer; *provided*, further, that on payment of said two per cent. into the territorial treasury, the said company shall be exempt from further taxation, either for county or territorial purposes.

Toll gates.

Verified
account of
receipts
transmitted
to territorial
treasury.

Taxes.

SEC. 4. Any person or persons, who, upon demand being made for toll, as provided in this act, at any toll-gate on said road, by the said parties, or their agent, or agents, refuses to pay the same, as herein authorized, or who shall pass, or attempt to pass, said toll-gate, or gates, without paying toll, as aforesaid, shall, upon complaint and conviction before a court of competent jurisdiction, be fined in any sum not less than ten dollars, nor more than one hundred dollars, for each offense, with costs, and stand committed until such fine and costs are paid.

Refusal to
pay toll.

SEC. 5. Any person or persons who shall, in any way, wantonly or maliciously destroy or injure any bridge or gate on the line of said road, or in such manner injure said road, upon complaint and conviction before a court of competent jurisdiction, shall be fined in any sum not less than twenty-five dollars, nor more than five hundred dollars, with costs of suit, and stand committed until the same be paid, or be punished by imprisonment in the county jail for a period not exceeding six months, in the discretion of the court. All fines collected under the provisions of this act, shall be for the use and benefit of said road company.

Injuring
road.

Fines.

SEC. 6. It shall be lawful for the governor and legislature of this territory, at any future session of such legislature, to alter or change the rates of toll herein provided.

Rates of toll
changed.

SEC. 7. This act shall take effect immediately after its passage.

CHAP. XXX.—*An Act to grant the right to construct a Toll Road from Smith & Co.'s Station to the mouth of Buena Vista Cañon, near Unionville, in Humboldt County.*

[Approved November 27, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows :

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|-------------------------------|--|
| Corporators. | SECTION 1. A. W. Nightingale, F. C. Ayers, and A. Benway, together with such associates as they may admit, shall take, have, possess and enjoy, all the rights, privileges, franchises, and rights of way, and full power to build and construct and maintain a public toll road across the Humboldt Mountains, the said toll road to commence at some point on the Immigrant Road, within six miles north of Smith & Co.'s Station, at the lower ford of the Humboldt River; running thence, in an easterly direction, through Spring Cañon, across the Humboldt Mountains, near the southern boundary of the Sacramento Mining District, to the valley on the east of the mountains, and thence north to the mouth of the Buena Vista Cañon, Buena Vista Mining District, near Unionville, in Humboldt County, and have and enjoy all rights, privileges, and immunities thereunto appertaining, and shall have the right of way across and through the land and territory lying between the said points of beginning and terminus, on the line of said road, as herein before described, which is hereby granted and ceded to said parties for the term of twenty-five years; <i>provided</i> , that within six months from the date of the passage of this act, the said parties shall commence the construction of said toll road, and within twelve months shall construct and complete the same, otherwise the right to construct the same shall be forfeited, and this act become null and void. Said parties shall, at all times after its completion, keep said road in passable order and condition, and shall be responsible for any damage arising to persons or property traveling over said road, caused by neglect to keep said road in proper repair and condition. After the expiration of three years from the completion of said road the county of Humboldt may have the right to purchase said road at an appraised value, to be determined by five appraisers, two to be selected by the said owners of said toll road, two by the county commissioners aforesaid, and one to be selected by the four appraisers herein before provided for; and such valuation shall be estimated to be the value of the road; <i>provided</i> , further, that nothing herein contained shall be so construed as to interfere with the main Humboldt Immigrant Road. |
| Franchise. | |
| Road to be completed. | |
| Humboldt County may purchase. | |
| Rates of toll, how fixed. | |
- SEC. 2. The said parties, upon the construction and completion of said road, shall be authorized and empowered to

charge and collect such rates of toll as the board of commissioners of Humboldt County may fix, and the said commissioners shall open the gates of said road if said road is not kept in repair.

SEC. 3. Said parties shall keep at each toll-gate on said road a bulletin-board, which shall contain the scale of prices. Bulletin-board.

SEC. 4. It shall be lawful for the governor and legislature of this territory, at any future session of such legislature, to regulate, alter, or change the rates of toll to be charged on said road. Tolls, how changed.

SEC. 5. This act to take effect and be in force from and after its passage.

CHAP. XXXI.—*An Act to audit the Claim of Alfred James, and to provide for the payment of the same.*

[Approved November 27, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The claim of Alfred James, for services rendered as clerk of the district court of the second judicial district, of the territory of Utah, in and for the county of Carson, amounting to the sum of six hundred and twenty dollars, is hereby audited and allowed as a charge against the territory, and the auditor is hereby required to draw his warrant upon the territorial treasurer for the same, and the said treasurer shall pay the same in its regular order, out of any money in the general fund not otherwise specifically appropriated by law, and the said warrant shall draw interest at the rate of ten per cent. per annum, from its presentation to the treasurer until paid. Claim allowed.
How paid.

CHAP. XXXII.—*An Act to prohibit Marriages and Cohabitation of Whites with Indians, Chinese, Mulattoes and Negroes.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. If any white man or woman intermarry with any black person, mulatto, Indian, or Chinese, the parties to such marriage shall be deemed guilty of a misdemeanor, and, Intermarriage prohibited.

on conviction thereof, be imprisoned in the territorial prison, for a term not less than one year, nor more than two years.

Persons,
performing
marriage
ceremony.

SEC. 2. If any person authorized to perform the marriage ceremony, shall unite any such person as mentioned in this act, in marriage, he shall be deemed guilty of a misdemeanor, and, upon conviction, be subject to imprisonment in the territorial prison, for a period not less than one year, nor more than three years.

Cohabitat'n.

SEC. 3. That, if any white person shall live and cohabit together with any black person, mulatto, Indian, or Chinese, in a state of fornication, such person so offending shall, on conviction thereof, be fined in any sum not exceeding five hundred, and not less than one hundred dollars, or be imprisoned in the county jail, not less than one, nor more than six months, or both such fine and imprisonment, as the court may order.

Fines, how
applied.

SEC. 4. All fines collected under this act, shall be paid into the treasury of the county in which the conviction is had, and set apart for the common school fund of the territory.

SEC. 5. This act to take effect from and after the second day of December, A. D. one thousand eight hundred and sixty-one.

CHAP. XXXIII.—*An Act relating to Marriage and Divorce.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Marriage.

SECTION 1. That marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential.

Persons
capable of
contracting.

SEC. 2. Every male person, who shall have attained the full age of eighteen years, and every female, who shall have attained the full age of sixteen years, shall be capable, in law, of contracting marriage, if otherwise competent; *provided*, however, that nothing in this act shall be construed so as to make the issue of any marriage illegitimate, if the person shall not be of lawful age; and *provided*, further, that all minors who shall have attained the age provided in this act for the contracting of marriage, shall be deemed in law to have attained their majority upon entering into the bonds of matrimony.

Consanguin-
ity.

SEC. 3. No marriage shall be contracted while either of the parties shall have a husband or wife living, nor between parties who are nearer of kin than second cousins, computing by the rules of the civil law, whether the half or the whole blood.

SEC. 4. Marriages may be solemnized by any justice of the

peace in the county in which he is elected, and they may be solemnized throughout the territory by any judge of a court of record, by ministers of the gospel, and by the governor of the territory.

Who may perform ceremony.

SEC. 5. If any person intending to marry, shall be under the age of twenty-one, if a male, or under the age of eighteen years, if a female, and shall not have had a former wife or husband, the consent, in person, or in writing, of the parent or guardian having the custody of such minor, if he or she have either a parent or guardian living in this territory, shall be given to the person solemnizing the marriage, before such marriage shall take place.

Consent of parent or guardian.

SEC. 6. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare in the presence of the judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife; and, in every case, there shall be at least two witnesses present, besides the person performing the ceremony.

Solemnization.

SEC. 7. When a marriage shall have been solemnized, the person solemnizing the same shall give to each of the parties, if required, a certificate thereof, specifying therein the names and residences of the parties, and of at least two witnesses present, and the time and place of such marriage, and, where the consent of the parent or guardian is necessary, stating that the same was duly given.

Certificate of to be given.

SEC. 8. Every person solemnizing a marriage, shall make a record thereof, and, within three months after such marriage, shall make and deliver to the recorder of deeds of the county where the marriage took place, a certificate under his hand, containing the particulars mentioned in the preceding section. The certificate may be in the following form:

Record of.

TERRITORY OF NEVADA, }
County of ———, } SS.

This is to certify, that the undersigned, a justice of the peace of said county (minister of the gospel, or judge, etc., as the case may be), did, on the ——— day of ———, A. D. 18—, join in lawful wedlock, A. B. and C. D., with their mutual consent, in presence of E. F. and G. H., witnesses.

Form of certificate of.

J. P., Justice of the Peace.

SEC. 9. All such certificates shall be filed and recorded by the said recorder, in a book to be kept by him for that purpose; and shall receive a fee of one dollar from the person solemnizing the marriage, who shall be entitled to receive the same from the parties before the marriage.

Book of records.

Fee.

SEC. 10. Every person solemnizing a marriage, who shall neglect to make and deliver to the recorder a certificate thereof, within the time above specified, shall forfeit for such neglect a sum not less than twenty, nor more than fifty dollars; and every

Certificate of to recorder.

LAWS OF NEVADA.

recorder who shall neglect to record such certificate, so delivered, shall forfeit the like penalty.

False
certificate.

SEC. 11. If any person shall willfully make any false certificate of any marriage, or pretended marriage, he shall forfeit, for every such offense, a sum not exceeding five hundred dollars, or may be imprisoned in the territorial prison, not exceeding one year, or by both such fine and imprisonment.

Persons un-
authorized
performing
ceremony.

SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing to any legal impediment to the proposed marriage, he shall, on conviction, be fined in any sum not exceeding five hundred dollars, and be imprisoned in the territorial prison, until such fine is paid.

When not
void.

SEC. 13. No marriage, solemnized before any person professing to be a judge, justice, or minister, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority, provided it be consummated with a full belief, on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Presumptive
evidence of.

SEC. 14. The original certificate and records of marriage, made by the judge, justice, or minister, as prescribed in this act, and the record thereof, by the recorder of the county, or a copy of such record duly certified by such recorder, shall be received in all courts and places, as presumptive evidence of the fact of such marriage.

Illegitimate
children.

SEC. 15. Illegitimate children shall become legitimized by the subsequent marriage of their parents with each other.

Fines, appli-
cation of.

SEC. 16. All fines and forfeitures, arising in consequence of a breach of this act, shall be paid into the county treasury, for the use of common schools; and in all cases, when a violation of the provisions of this act is not declared a misdemeanor, said fines and forfeitures shall be recovered by a civil action, to be brought by any person aggrieved, or by the county treasurer.

"Friends,"
or "Qua-
kers."

SEC. 17. All marriages solemnized among the people called "Friends," or "Quakers," in the form heretofore practiced, and in use in their meetings, shall be good and valid.

DIVORCE AND ALIMONY.

When void
without
decree of
divorce.

SEC. 18. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this territory, be absolutely void, without any decree of divorce, or other legal proceedings.

Parties inca-
pable of
assenting,
when void.

SEC. 19. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when fraud shall have been proved, and there shall have been no subsequent voluntary cohabitation of the parties, the

marriage shall be void from the time its nullity shall be declared by a court of competent authority.

SEC. 20. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under age of legal consent, if it shall appear that the parties, after they attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

SEC. 21. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the probate court of the county where the parties, or one of them, resided, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

SEC. 22. Divorce from the bonds of matrimony, may be obtained by complaint, under oath, to the probate court of the county, in which the cause therefor shall have accrued, or in which the defendant shall reside, or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided for six months before suit be brought, for the following causes: First. Impotency at the time of the marriage, continuing to the time of the divorce. Second. Adultery since the marriage, remaining unforgiven. Third. Willful desertion of either party by the other, for the space of two years. Fourth. Conviction of felony, or infamous crime. Fifth. Habitual, gross drunkenness, contracted since marriage, of either party, which shall incapacitate such party from contributing his, or her share, to the support of the family. Sixth. Extreme cruelty in either party. Seventh. Neglect of the husband for the period of two years, to provide the common necessities of life, when such neglect is not the result of poverty, on the part of the husband, which he could not avoid by ordinary industry.

SEC. 23. If the defendant is not a resident of the territory, or cannot, for any cause, be personally summoned, the court, or judge, in vacation, may order notice of the pendency of the suit to be given in such manner, and during such time, as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay; and if no such order be made, it shall be sufficient to publish such notice in a weekly newspaper, printed in, or nearest to, the county in which the suit is pending, three months in succession; and if the defendant fail to appear, and make defense, at the first term after such notice, or after thirty days' personal service of summons, the evidence may be heard, and the cause decided, at that term; or compulsory process may be had to obtain an ap-

pearance, or answer, if it be necessary to the disposition of property, or of children.

Disposition
of children
of divorced
parents.

SEC. 24. The court, in granting a divorce, shall make such disposition of, and provisions for, the children, as shall appear most expedient under all the circumstances, and most for the present comfort and future well-being of such children; and when, at the commencement, or during the pendency, of the suit, it shall be made to appear to the court, or to the judge, in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother, or other female, has been, or is likely to be, taken or detained from her, or that any child of either party, has been, or is likely to be taken, or removed, by, or at the instance of, the other party, out of the county, or concealed within the same, it shall be the duty of the court, or of such judge, in vacation, forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced, and made effectual, by attachment, commitment, and requiring security for obedience thereto, or by other means, according to the usages of courts, and to the circumstances of the case; *provided*, the court, upon good cause shown, may change the custody of such minor children, if they should be satisfied that such change will be for the welfare of such children.

Disposition
of property
for benefit
of children.

SEC. 25. In granting a divorce, the court shall also make such disposition of the property of the parties, as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the children. And all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of or regulated by the order of the court, shall, by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. And if, after the filing of the petition, it shall be made to appear probable to the court, or the judge, in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

Testimony
and plead'gs.

SEC. 26. The testimony of witnesses in suits for divorce, shall be given orally in court, with the right to either party to take and use depositions, on the same terms and in the same manner as in actions at law; and the proceedings, pleadings and practice, shall conform to those at law, as nearly as con-

veniently may be, but all preliminary and final orders may be in such form as will best effect the object of this act, and produce substantial justice.

SEC. 27. When the marriage shall be dissolved, by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery, committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the court shall set apart such portion for her support, and the support of their children, as shall be deemed just and equitable.

Wife's
proportion
of property.

SEC. 28. Whenever an order of divorce from the bonds of matrimony, is granted in this territory, by the court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties; and in all suits for a divorce, brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, and shall in its order decree and appoint.

Effect of
divorce.

Female's
name may
be changed.

SEC. 29. Either party, on application to the court, may be entitled, at such trial, to have the issue of fact involved in such case, and presented by the pleadings, tried by a jury, in accordance with the general rules governing the trial of civil actions in the district court.

Issue of fact.

SEC. 30. This act shall take effect, and be in force, from, on, and after the second day of December, A. D. 1861.

CHAP. XXXIV.—*An Act in relation to Money of Account and Interest.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The money of account of this territory shall be the dollar, cent, and mill; and all accounts in the public offices, and other public accounts, and all proceedings in courts, shall be kept and had in conformity to this regulation.

Computa-
tion of.

SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument, expressed in any other money of account, but the same shall be reduced to dollars, or parts of dollars, as herein before directed, in any suit thereupon.

Accounts
not vitiated.

SEC. 3. In all judgments and decrees, rendered by any court of justice, for any debt, damages, or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions,

Judgments,
how com-
puted.

and no judgment, or other proceedings, shall be considered erroneous for such omission.

Rates of
interest.

SEC. 4. When there is no express contract, in writing, fixing a different rate of interest, interest shall be allowed at the rate of ten per cent. per annum, for all moneys after they become due on any bond, bill, or promissory note, or other instrument of writing, on any judgment recovered before any court in this territory, for money lent, for money due on the settlement of accounts, from the day on which the balance is ascertained, and for money received to the use of another.

Parties may
agree for.

SEC. 5. Parties may agree, in writing, for the payment of any rate of interest whatever on money due, or to become due on any contract. Any judgment rendered on such contract, shall conform thereto, and shall bear the interest agreed upon by the parties, and which shall be specified in the judgment; *provided*, only the amount of the original claim or demand shall draw interest after judgment.

CHAP. XXXV.—*An Act for the Improvement of the East Branch of Carson River.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Parties
authorized
to improve.

SECTION 1. That C. H. Hobbs, J. C. Russell, David Smith, and J. L. Pennell, are hereby authorized and empowered to so improve the east branch or fork of Carson River, from where the same crosses the boundary line between California and Nevada Territory, to the junction of the same with the west branch of said river, and thence the main channel to the town of Empire City, in Carson County, by removing logs, rocks, opening sloughs, and cleaning out other natural obstructions in the same, so as to make said river suitable for the purpose of rafting down logs for manufacture into lumber and other timber, to the point above named, and for no other purposes; *provided*, that nothing in this act shall be so construed as to constitute the said Carson River a navigable stream.

Exclusive
right.

SEC. 2. The said C. H. Hobbs, J. C. Russell, David Smith, and J. L. Pennell, or their assigns, shall, on their compliance with the provisions of the first section of this act, have the exclusive right to the use of said river, within the points named in said first section, for the purpose of floating down logs and timber of all kinds, for the period of sixteen months, commencing on the first day of March, A. D. 1862. At the expiration of which said time, the right to the use of said river

shall be free and open to the people of Nevada Territory, with all improvements made upon the same by said parties.

SEC. 3. The privileges herein granted shall not be used so as to injure any dam or other improvement heretofore made by any person or persons, in or upon said stream of water, without first paying, or tendering to pay, a just compensation for such damage or injury. Injury to property to be compensated.

SEC. 4. Nothing in this act shall be so construed as to prevent any parties from erecting a dam or dams, across the said river, for the purpose of creating water power; but said parties hereafter erecting such dams, shall be required to construct suitable chutes and aprons for the purpose of passing over logs or other lumber; but parties having already erected dams, shall not be required to erect said chutes and aprons, but the grantees shall construct the necessary chutes and aprons. Not to prevent erection of dams, etc. Chutes and aprons.

SEC. 5. Nothing in this act shall be so construed as to prevent parties from taking the water of said river in ditches, and conveying it to distant points for the purpose of propelling machinery for mining purposes, or for building dams for said purposes. Not to prevent uses of water.

SEC. 6. The said C. H. Hobbs, J. C. Russell, David Smith, and J. L. Pennell, are hereby required to construct such chutes and aprons over all dams now erected, crossed by them, as will entirely secure the same from injury, and also to construct proper booms, at or near Empire City, across said river, to prevent any logs or timber floating down said stream, below said point. Dams to be secured from injury.

SEC. 7. A. W. Pray, James Wheeler and John H. Atchison, are hereby appointed a board of commissioners, to examine the chutes, booms and aprons, constructed as herein above provided, and, when they, or any two of them, shall certify said river to be safe to float and raft logs and timber, without damage to the dams below thereon, it shall be lawful for the parties herein named to use the said stream as herein above set forth; *provided*, it shall not be lawful for said parties to exclude any of the rights or franchise herein granted, until they shall have first obtained said certificate. Commissioners to determine when safe to raft, etc.

SEC. 8. This act to take effect, and be in force from and after its passage.

CHAP. XXXVI.—*An Act to provide for a Special Election.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That a special election shall be held in the several election precincts in this territory, on the second Tuesday in January, A. D. 1862, at which there shall be elected all territorial, county, and township officers authorized by the laws of this territory, and not otherwise provided for; and they shall enter upon the duties of their several offices, on the first Monday of February next following such election, and shall hold their respective offices until their successors are elected at the first general election thereafter, and qualified; *provided*, that Esmeralda County shall not be included in the provisions of this act; and *provided*, further, that when the western boundary line may be determined by territorial authority, or otherwise, the Governor shall appoint the necessary county officers, who shall hold their office until their successors shall have been elected at the first general election thereafter, and qualified.

SEC. 2. *And be it further enacted*, That there shall be chosen in joint session of the legislature, on Saturday, November 23d, at 11 o'clock, A. M., or as soon thereafter as the two houses may by concurrent resolution order, a board of three commissioners for each county organized in this territory, who shall conduct such election in the manner provided by "An Act creating a Board of County Commissioners."

SEC. 3. *And be it further enacted*, That all persons holding office in this territory by virtue of appointment by the executive, are hereby authorized to continue in such office until the first Monday of February, A. D. 1862.

SEC. 4. This act shall take effect from and after its passage.

CHAP. XXXVII.—*An Act authorizing a Reward of One Thousand Dollars for the apprehension of Wm. Mayfield, for the murder of John L. Blackburn, and providing for the payment of the same.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the sum of one thousand dollars be, and is hereby appropriated out of any moneys that may be paid into the territorial treasury, as a reward to any person, for the arrest and safe delivery of the body of Wm. Mayfield, at the jail in Carson City, for the murder of John L. Blackburn, late sheriff of Carson County, Nevada Territory, and, upon order of the governor, the territorial auditor shall draw his warrant for said sum.

Reward
offered.

How paid.

CHAP. XXXVIII.—*An Act relating to Sheriffs.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That there shall be elected at the annual election, in each county in this territory, a sheriff, who shall hold his office for two years, and until his successor is elected and qualified; *provided*, the sheriff elected at the special election of January next, shall hold his office until the first general election, and until his successor is qualified.

When
elected.

SEC. 2. Before entering upon the discharge of his duties, each sheriff shall take an oath of office, and give a bond to his county, in the penal sum of not less than ten, nor more than fifty thousand dollars, with two or more sureties, residing in his county, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties of his office, which bond shall be filed with the county auditor.

Oath of office
and bond.

SEC. 3. Each sheriff shall have power to appoint, in writing, signed by him, one or more deputies, who are hereby empowered to perform all the duties devolving on the sheriff of the county. And the sheriff shall be responsible for all the acts of his deputy or deputies, and may remove such deputy or deputies at pleasure, but no deputy sheriff shall be qualified to act as such, until he has taken an oath to faithfully and impartially discharge the duties of said office, which said oath shall be certified on the back of his appointment, and filed in

To appoint
deputies.

Oath of
office of.

the office of the county auditor. The sheriff may also require of his deputies such bonds as to him shall seem proper.

To appoint jailors.

SEC. 4. The sheriff of each county shall have the custody of the jail, or prison, of his county, and the prisoners in the same, and shall appoint the keeper thereof, for whose conduct he shall be responsible, and whom he may remove at pleasure; and no sheriff, or deputy sheriff, shall hold any other civil office, except that of deputy marshal, nor shall he be allowed to practice law in any court of which he is an officer.

Duties of.

SEC. 5. It shall be the duty of sheriffs, and of their deputies, to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person, for felony, or breach of the peace, they may call upon the power of their county, to aid in such arrest, or in preserving the peace.

Same.

SEC. 6. It shall be the duty of the sheriff, to attend in person, or by deputy, at all sessions of the district court, in his county, and to obey all the lawful orders and directions of the same; to execute the process, writs, or warrants, of courts of justice, or of judicial officers, when delivered to him for that purpose.

Writs and orders to be indorsed by.

SEC. 7. When any process, writ, or order, shall be delivered to the sheriff, to be served or executed, he shall forthwith indorse upon it, the year, month, day and hour, of its reception, and shall give to the person delivering it, if required, on payment of his fee, a written memorandum, signed by him, stating the names of the parties in the process, or order, the nature thereof, and the time it was received. He shall also deliver to the party served, a copy thereof, if required so to do, without charge to such party.

Execution of process by.

SEC. 8. A sheriff, to whom any process, writ, order, or paper, shall be delivered, shall execute the same with diligence, according to its command, or as required by law, and shall return it, without delay, to the proper court, or officer, with his certificate indorsed thereon, of the manner of its service, or execution, or if not served, or executed, the reasons of his failure. For a failure so to do, he shall be liable to the party aggrieved, for all damages sustained by him on account of such neglect.

Liable for failure.

Liable to creditors for neglect to attach.

SEC. 9. If the sheriff, to whom a writ of execution, or writ of attachment, is delivered, shall neglect, or refuse, after being required by the creditor, or his attorney, to attach, or to levy upon, or sell, any property of the party charged in the writ, which is liable to be attached, or levied upon, and sold, he shall be liable, on his official bond, to the creditor, for the value of such property.

Liability for collections.

SEC. 10. If a sheriff shall neglect, or refuse, to pay over, on demand, to the person entitled, any money which may come into his hands, by virtue of his office, after deducting

his legal fees, the amount thereof, with twenty-five per cent. damages, and interest at the rate of ten per cent. per month, from the time of the demand, may be recovered by such person, from him, and the sureties on his official bond, on application, upon five days' notice to the court, in which the action is brought, or the judge thereof, in vacation.

SEC. 11. The sheriff shall keep an office at the county seat of his county, which shall be kept open on all days except Sundays, from nine o'clock, forenoon, until five o'clock, afternoon. Location of office.

SEC. 12. No sheriff shall, directly or indirectly, ask, demand, or receive, for any services or acts by him performed in pursuance of any duty of his office, any greater or more fees than he is allowed by law, on pain of forfeiting, for such offense, to the party aggrieved, treble the sum so demanded or received, and his legal fees, together with costs of suit. Limit to fees

SEC. 13. No sheriff shall become the purchaser, nor procure any person to become the purchaser for him, of any property, real or personal, by him exposed to sale, by virtue of any execution or other process; and all such purchases made by any sheriff, or any person in his behalf, shall be absolutely null and void. Purchases by sheriff.

SEC. 14. Any sheriff, at the expiration of his term of office, having any execution or final process which he may have levied and not collected, shall be, and hereby is, authorized to proceed and collect such execution in the same manner as if his term of office had not expired. May collect after term of office.

SEC. 15. When any prisoner shall be committed to the county jail for trial, or for examination, or upon conviction for a public offense, or for disobedience to any writ, mandate, process, or order of any court, such prisoner shall be actually confined in the jail, until he is legally discharged; and if he be permitted to go at large out of the jail, except by virtue of a legal order or process, it shall be an escape, and the sheriff or jailor permitting it, shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding ten thousand dollars. Escape of prisoners from.

Punishment.

SEC. 16. The sheriff, in any county, in any judicial district in this territory, to which any other county or counties in such district may be attached for judicial purposes, shall have power and authority to serve all process, writs, orders, or other papers issued or directed to him by the district court of his county, or the clerk thereof, within any county or counties so attached, the same as if the said county or counties were not separate and distinct counties. Authority of in judicial district.

SEC. 17. No sheriff shall be liable for any damages for neglecting or refusing to serve any civil process, unless his legal fees (and an indemnifying bond in cases where he has doubts as to the ownership of property sought to be levied When not liable for damages.

upon or attached, if the same shall be required by him) are first tendered him.

Service of
paper on.

SEC. 18. Service of a paper upon the sheriff, may be made by delivering it to himself in person, or by delivering it to one of his deputies, or to a person belonging to and in the office, during office hours, or if no such person be there, by leaving it in a conspicuous place in the office.

SEC. 19. This act to take effect, and be in force, from and after its passage.

CHAP. XXXIX.—*An Act in relation to the Militia of the Territory of Nevada.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Governor to
issue com-
mission.

Governor's
staff.

Adjutant-
general.

Salary.

Other officers
of general
staff.

Appointm'ts.

Major and
brigadier-
general.

Appointm'ts.

Staff of
division.

SECTION 1. The governor, as commander-in-chief of the militia of the territory, shall issue commissions to all officers appointed or elected under the provisions of this act. The military staff of the commander-in-chief, shall consist of one adjutant-general, with the rank of brigadier-general, five aids-de-camp, with the rank of lieutenant-colonel, one chief-engineer, one paymaster-general, one judge-advocate-general, and one surgeon-general, each with the rank of colonel.

SEC. 2. The adjutant-general shall be appointed by the commander-in-chief, and shall hold his office for the term of two years. He shall be *ex officio* chief of staff, quartermaster-general, commissary-general, inspector-general, and chief of ordnance. He shall receive a salary of one thousand dollars annually, to be paid out of moneys appropriated for that purpose. He shall reside at the seat of government, and shall keep his office open for the transaction of business, every day (Sundays excepted), from ten o'clock, A. M. to three o'clock, P. M.

SEC. 3. Other officers of the general staff, and all other officers of the staff of the commander-in-chief, shall be appointed by the governor, and shall continue in office for the same term as the governor, or at his pleasure, except as hereinafter provided for officers called into active service.

SEC. 4. There shall also be appointed, by the commander-in-chief, one major-general to each division, and one brigadier-general to each brigade, who shall hold their offices for the term of four years, and until their successors are appointed and qualified, except as hereinafter otherwise provided.

SEC. 5. The staff of the major-general of division, shall consist of one assistant adjutant-general, with the rank of lieu-

tenant-colonel, two aids-de-camp with the rank of major, one engineer officer, one ordnance officer, one quartermaster, one commissary, one paymaster, one division inspector, one judge-advocate, and one surgeon, with the rank of lieutenant-colonel, and four staff orderlies, with the rank of sergeant-major. The staff of the adjutant-general shall consist of one aid-de-camp, with the rank of captain. The staff of each general of brigade shall consist of one assistant adjutant-general, with the rank of major, one aid-de-camp, with the rank of captain, one engineer officer, one ordnance officer, one quartermaster, one commissary, one paymaster, one brigade inspector, one judge-advocate, and one surgeon, with the rank of major, and two staff orderlies, with the rank of sergeant-major. The staff of a colonel of a regiment, and of a lieutenant-colonel, or a major commanding a battalion, as hereinafter provided, shall consist of one adjutant, and one assistant-surgeon, each with the rank of first lieutenant, and one sergeant-major, to be appointed by such commanding officer, the adjutant being selected from the line, as in the United States Army.

Adjutant-general.

Brigades.

Regiments and battal'ns

SEC. 6. The generals of divisions and brigade, and the adjutant-general, shall appoint the officers of their respective staffs, but those appointed by generals of divisions and brigades must be residents of their respective divisions and brigades. Any officer of a regiment, battalion, or company, receiving and accepting any staff appointment, except that of adjutant, shall be considered as *ipse facto* resigning his commission in such regiment, battalion, or company. All such staff officers will continue to hold office until their successors shall have been appointed and commissioned, except as is herein otherwise provided for troops called into active service.

How appointed.

Term of office.

SEC. 7. All military officers appointed, or elected, under the laws of this territory, shall be commissioned by the governor, and each commission shall be countersigned by the secretary of territory, and attested by the adjutant-general, or officer acting in his place; and the officer so commissioned, shall take the official oath of office prescribed by the laws of this territory, before some officer authorized by law to administer oaths, a copy of which oath shall be indorsed on each commission, and a certified copy of the same shall be made out by the officer administering it, and delivered to the officer taking it, and by him transmitted to the adjutant-general; and the commission shall be deemed as taking effect on the day of the indorsement and transmission of the certificate of the oath, as herein provided. In case of promotion, the oath need not be renewed, and the commission shall take effect from its date. Commission shall run at the pleasure of the commander-in-chief, except as is herein otherwise provided.

Commissions issuance of.

SEC. 8. It shall be the duty of the adjutant general to take charge of, and to carefully guard and preserve, and to account for, all arms, accouterments, ammunition, ordnance stores, and

Duties of adjutant-general.

To make
report
annually
to governor.

Form of
report.

To perform
certain
duties.

Bond of
adjutant-
general.

To turn
over state
property.

other military property, belonging to this territory, or granted to it by the congress of the United States. He shall visit, annually, the several military divisions, as hereafter enumerated in the provisions of this act, for the purpose of inspecting and reviewing the troops of said divisions, a report of which shall be made in full to the governor of the territory. He shall keep, and file, in his office, all returns, reports, and military correspondence made by him, in accordance with the provisions of this act. He shall also keep an account of all moneys received and expended by him. The manner of keeping these accounts and papers, where not otherwise provided by law, shall be directed by the commander-in-chief, and they shall be always subject to his inspection. He shall, on or before the second Monday in November, of each year, make to the governor, to be by him laid before the legislature, a report of all the transactions of his department since his last annual report, containing—First. An account of all moneys received and expended. Second. An account of all arms, accouterments, ammunition, ordnance stores, and military property of every description, belonging to the territory, from what source received, to whom issued, or how expended, and by whose order. Third. A statement of the present condition of all such property, under his charge, and if any such property shall not be under his charge, he shall state in whose possession the same may be. Fourth. The number, strength, and condition of the organized militia, and the strength of the enrolled militia, of the territory. He shall also make, and transmit, an annual return of the militia of this territory, pursuant to the requirements of the act of congress, of March second, eighteen hundred and three, to the president of the United States, a copy of which, duly certified, he shall lay before the commander-in-chief of this territory. He shall also perform all other duties appertaining to his office, or which may be enjoined on him by law. He shall be the medium of military correspondence with the commander-in-chief.

SEC. 9. Before entering upon the duties of his office, he shall give bonds to the people of the territory of Nevada, with good and sufficient sureties, to be approved by the governor, in the sum of ten thousand dollars, conditioned that he shall faithfully perform all the duties enjoined on him by law. If, at any time, the governor shall deem the sureties so given to be insufficient, he shall require the adjutant-general to give new sureties, to be approved by him; and if the adjutant-general shall refuse or neglect to do so, the governor shall suspend him from office.

SEC. 10. On the expiration of his term of office, the adjutant-general will turn over to his successor, in good order, all arms, ordnance, ordnance stores, and other property, belonging to the territory, and all the books, papers, bonds, and money, in his charge, and pertaining to his office.

SEC. 11. Every free, able-bodied, white male inhabitant of this territory, between the ages of eighteen and forty-five years, not exempt by law, shall be subject to military duty, and shall be organized and enrolled as hereinafter directed. Military duty.

SEC. 12. The following persons are exempted from military duty and enrollment: All ministers of religion, having a license, or written evidence, according to the rules of their particular persuasion or organization, that they are such ministers; all civil and military officers of the United States; all officers of foreign governments; all civil officers (including members of the legislature) of the territory of Nevada; all persons who have been wounded in the service of this territory, or of the United States; and all persons exempted from military duty by the laws of the United States. Persons exempt.

SEC. 13. The district or county assessor, of each and every revenue district, or county, in this territory, shall, at the same time in each year, when he prepares a roll containing the taxable inhabitants of his district, or county, enroll all the inhabitants of his district, or county, subject to military duty, which list, or roll, shall be sworn to by him, and be delivered to the clerk of the board of commissioners, in the same manner, and at the same time, as is provided by law for the civil tax list, or assessment roll; and the clerk of the board of commissioners shall keep the same open for inspection, as is provided by law for the civil assessment roll. Duty of officers.

SEC. 14. The board of equalization shall correct the said military assessment roll, at the same time, and in the same manner, as is prescribed by law for the correction of the civil tax list; and it shall be the duty of the said clerk to deliver to the brigadier-general, of the brigade to which his county belongs, a triplicate of said list, certified by him, within ten days after the board of equalization shall have completed their corrections; and the compensation allowed for making out said military list, shall be the same, or be determined and fixed in the same manner, as for making out the assessment list. Duties of board of equalization.

SEC. 15. If any assessor shall neglect or refuse to perform any of the duties required of him by this act, he shall be subject to the same penalties, liabilities, and punishments, as are provided by law for a neglect or refusal to perform any of the duties required of him for the assessment of the civil taxes; and if the clerk of the board of equalization, shall neglect or refuse to make, or deliver, to the brigadier-general of the brigade to which his county belongs, the triplicate of the military assessment roll, as directed in this act, he shall forfeit and pay the sum of not less than two hundred, and not more than five hundred dollars, to be sued for and recovered in the same manner as is provided in this section with respect to the assessor. Neglect of assessor and board of equalization.

SEC. 16. Whenever a sufficient number of persons, by the provisions of this act, citizens of any county of this territory, Organizat'n of volunteer companies.

subject to military duty, shall subscribe to a call for the organization of a volunteer company, the probate judge of said county, upon due application of the persons who have subscribed as above, shall appoint some suitable person, resident of the county, to open a book, in which he shall enter the names of the persons so volunteering, and shall fix a time and place of meeting, for the purpose of organization, by giving ten days' notice thereof by publication in some newspaper, or by posting notices in at least three public places in the county.

Presiding
officer.

SEC. 17. The person so appointed shall preside at said meetings, and organize the same; he shall superintend the election of the officers of said company, which election shall be by ballot; he shall make out, after said election shall have been determined, a list of the persons so volunteering, a certificate of each officer so elected, and transmit them to the adjutant-general of the territory, together with a copy of the proceedings of said meeting, and a copy of his appointment, and of the notice of said meeting, duly certified by him. And if it shall be found that said company has been organized, and such officers elected, in conformity with the provisions of this act, such company shall be listed in the office of the adjutant-general as a company of the organized volunteer militia of this territory, and the officers so elected shall be commissioned by the commander-in-chief.

Companies
and officers,
cavalry.

SEC. 18. The volunteer or independent companies, shall be armed and equipped in the same manner as similar corps in the army of the United States, and shall consist of the following officers, non-commissioned officers and privates, viz.: To each company of cavalry, one captain, one first and two second lieutenants, four sergeants, four corporals, one saddler, one farrier, one trumpeter, and not less than forty, nor more than eighty privates. To other companies, there shall be one captain, one first and two second lieutenants, four sergeants, four corporals, one drummer, one fifer, and not less than forty, nor more than eighty privates, excepting light batteries, who [which] shall be allowed one hundred active members each, and such officers as are allowed in the United States service.

Light
batteries.

By-laws.

SEC. 19. Volunteer companies and battalions may adopt a constitution and form by-laws, rules and regulations, not inconsistent with the constitution of the United States, or of this territory, for the government of their members, and for their improvement in military science. It shall be the duty of the acting orderly-sergeant of the company and sergeant-major of the battalion, to keep a perfect and complete record of the constitution, by-laws, rules, and regulations of his company or battalion, which shall be signed by the captain or commander, and countersigned by the orderly-sergeant or sergeant-major; and said record shall, at all times, be subject to the inspection of any member of the company or battalion, and all military officers or persons interested therein.

SEC. 20. When any volunteer company shall be organized according to law, the commanding officer thereof may apply to the commander-in-chief, through the proper military authorities, for such arms and accouterments, or stores, as may be required; such application being first submitted to the probate judge, and receiving his approval, which shall be indorsed thereon. If the commander-in-chief shall approve such application, or any part thereof, he shall give an order upon the back thereof, directing the issue by the adjutant-general, who shall immediately notify the officer making such application and the probate judge, who approved it, that the arms and accouterments, or stores, mentioned in such application, or any portion thereof, are ready for issue; and thereupon it shall be the duty of such officer, to give such bonds and security as may be deemed requisite by the probate judge, to secure the county from loss on account of use or misapplication of such arms, or equipments, or other stores. And on due notification from such probate judge, that such bonds have been given to his satisfaction, and on receiving triplicate receipts from such officer, the adjutant-general shall make the issue. He shall file one copy of such receipts in his office, and transmit the other two, one to the auditor of the territory, and the other to the county clerk of the county to which such volunteer company belongs.

Applications
for arms.

Bonds.

SEC. 21. The commander-in-chief shall have authority to demand and receive back from any county, or from any portion of the military force of this territory, any arms, equipments, military stores, or other property, belonging to the territory, which may be in the possession of any such counties, or military force. And when such arms, equipments, military stores, or other property, shall again come into the possession of the adjutant-general, or other officer, designated by the governor to receive them from such counties, or military forces, to which they have been issued, as above provided, it shall be the duty of the adjutant-general, or officer so appointed, to receipt for the same, which receipt shall be in triplicate, one copy to be filed in the office of the county clerk, one in the office of the auditor, and the third in the office of the adjutant-general.

Arms to be
returned.

SEC. 22. All arms, equipments, and military stores, issued as herein before provided, shall at all times, be subject to examination by the inspector and ordnance officers of the territory, and of any other officer designated by the commander-in-chief for that purpose; and if such officer shall find any of such public property out of repair, injured, or defective, he shall immediately notify the facts to the board of commissioners of the county, and report the same, through the proper channels, to the commander-in-chief, who, if the damage shall not be repaired, and the defects or losses supplied, within a reasonable time, shall order the same to be done under the direction of some officer, and the vouchers for the expense thereof shall

Arms, etc.,
subject to
inspection.

be duly examined, and audited by the territorial board of military auditors, and paid on the draft of the auditor of the territory, out of the general fund.

Duties of
territorial
auditor.

SEC. 23. - It shall be the duty of the territorial auditor, to charge the value of all arms, equipments, and military stores, issued as above provided to the counties, to the military companies in which such public property shall be issued, and all expenses of repairs of damage and defects, as provided in the foregoing section, and double the value of any arms, accouterments, and military property, which such counties, or such military companies, shall have failed to return to the territory on the demand of the governor. At the close of each fiscal year, he shall settle the account of each county, with reference to such issues and military charges; and the amount so found due, shall, on the requisition of the territorial auditor, be assessed, at the time of the next annual assessment, as a part of the county taxes, and be collected in such county in the same manner as the ordinary taxes, and shall be paid into the territorial treasury as a part of the general fund of the territory.

Transporta-
tion of arms.

SEC. 24. The transportation of all arms, equipments, and military stores, issued to troops, or received by the territory, under the provisions of this act, shall be contracted for, under the direction of the commander-in-chief, by the adjutant-general, and the vouchers for such transportation, when audited by the territorial board of military auditors, shall be paid from the general fund, on the warrant of the auditor.

Arms not to
be issued.

SEC. 25. No public arms, equipments, or military stores, of any kind, shall hereafter be issued to any person not a member of the organized volunteer militia, or of the enrolled militia, called into active service, except in time of war, insurrection, or public danger, so imminent that the commander-in-chief shall consider that the public safety requires him to make such issue, in which case an accurate account shall be taken of such issues, and to whom they are made.

Battalions,
organization
of.

SEC. 26. Any number of organized volunteer companies, not less than three, nor more than eight, may form themselves into a volunteer battalion, by giving notice of such intention through their commanding officers to the general of their brigade, who shall appoint some suitable officer to hold an election of the officers of such battalion; and the officer so appointed, shall fix a time and place for such election, by giving ten days' notice thereof, by publication in some newspaper, or by posting notices in at least three public places in the county. Such election shall be by ballot, by the commissioned officers of the volunteer companies calling for the organization of the battalion. The officer so appointed to hold the election, shall preside over and superintend such election, and, as soon as it shall have been determined, he shall make out certificates of election of the officers so elected, and a certified account of the proceedings of said meeting, with a certified copy of the notice

of said meeting, all of which he shall transmit to the brigadier-general of the brigade, who shall transmit them, with a certified copy of the appointment of such officer to hold the election, to the adjutant-general of the territory, through the ordinary channels of military correspondence.

SEC. 27. A battalion of eight companies, shall be deemed a regiment, and shall elect one colonel, one lieutenant-colonel, and one major; a battalion of more than four, and less than eight companies, shall elect one lieutenant-colonel, who shall be the commanding officer, and one major; and a battalion of three, or four, companies, shall elect one major, who shall be the commanding officer.

Regiments,
officers of.

SEC. 28. It shall be the duty of each and every commanding officer of any volunteer company in this territory, on or before the last Mondays of March and September, of each year, to muster his company, and to make out in triplicate muster-rolls, setting forth the names and number of the members of his company, the officers, in the order of their rank, and the privates, in alphabetical order, and stating, at the foot of such muster-roll, a list of all arms, accouterments, ordnance, and ordnance stores, and other property, belonging to the territory, in his possession; one of which muster-rolls, duly certified, he shall transmit, through his commanding officer, to the adjutant-general of the territory; he shall file one in the office of the county clerk of his county, and he shall keep the other as a voucher for himself. If such company shall form a part of any organized battalion, or regiment, the commanding officer thereof shall transmit the same, with a muster-roll of the field and staff officers of his regiment, or battalion, to the adjutant-general of the territory, through the proper channels of military correspondence.

Muster rolls,
duty of
captain.

SEC. 29. All commissioned officers of the organized volunteer regiments, battalions, and companies, shall take rank according to the date assigned them by their commissions; and, when two of the same grade be of the same date, their rank shall be determined by length of service in the militia; and, if of equal services, then by lot. Officers of organized volunteer regiments, battalions, and companies, shall, in all cases, be deemed of superior rank to officers of the enrolled militia of the same grade, irrespective of the date of their commission.

Commission'd
officers to
take rank.

SEC. 30. It shall be the duty of each and every brigadier-general, to make, from the assessment rolls received by him from the clerk of the boards of commissioners, and from the muster-rolls received by him from the officers of companies, battalions, and regiments, as prescribed in this act, on or before the first Monday in October, of each year, two brigade muster-rolls, one to be entitled, "Muster-Roll of the organized Militia of the ——— Brigade, ——— Division"; and the other to be entitled "Muster-Roll of the enrolled Militia of the ——— Brigade, ——— Division," in the first of which he shall include the

Brigadier-
generals,
duties of.

names of all the officers of his staff, and all the officers, non-commissioned officers, musicians, artificers, and privates, of the organized volunteer regiments, battalions, and companies, in his brigade, in the order of organization; and, in the second, he shall include, in alphabetical order, the names of all other persons subject to military duty. The originals of these muster-rolls, signed by the general of brigade, shall be filed in his office, and duly certified copies thereof shall be furnished by him to the general of his respective division, and to the adjutant-general of the territory.

Major-
generals,
duties of.

SEC. 31. And it shall be the duty of each and every major-general of division, on or before the second Monday of October, of each year, to make, from the rolls received by him from the brigadier-generals of his division, two muster-rolls, one to be entitled "Muster-Roll of the organized Militia of the ——— Division," and the other to be entitled "Muster-Roll of the enrolled Militia of ——— Division," the first to be made up of the names of the officers of the division, staff, and the muster-rolls of the organized militia of the brigades of his division, according to their organization; and the other to be made up of the muster-rolls of the enrolled militia of these brigades, as provided in the foregoing section. The originals of these muster-rolls, signed by the major-general, shall be filed in his office, and duly certified copies thereof shall be transmitted to the adjutant-general of the territory.

Classificat'n
of militia.

SEC. 32. All commissioned officers of the staff of the commander-in-chief, the adjutant-general, and the officers of his staff, all major-generals and brigadier-generals, and all officers of their respective staffs, and all commissioned officers, non-commissioned officers, musicians, artificers and privates of volunteer regiments, battalion, and companies, whose names are borne upon the muster-rolls of their respective regiments, battalions and companies, shall be denominated the organized militia of the territory, and shall, at all times, be subject to be called into active service by the commander-in-chief; and, when so called into active service, each person shall be called and mustered according to his commission, enrollment and organization; all other militia in this territory shall be denominated the enrolled militia of this territory.

Active ser-
vice, may be
called into.

SEC. 33. In case of war, insurrection or rebellion, or of resistance to the execution of the laws of this territory, or upon the call or requisition of the president of the United States, or upon the call of any officer of the United States Army, commanding a division, department, or district in this territory, or upon the call of any United States marshal in this territory, or sheriff of any county, the commander-in-chief is authorized to call into active service any portion of the organized, or enrolled militia of this territory. In case of the absence of the commander-in-chief from the capitol, or if it be impossible to immediately communicate with him, the civil or military

Certain offi-
cers may call
out troops.

officer making the requisition for troops, may, if he deems the danger imminent, and not admitting of delay, serve a copy of such requisition, together with a statement of the governor's absence, or the impossibility of immediately communicating with him, upon the major-general of the division, or, in his absence, upon the general of the brigade, who is hereby authorized to exercise, with respect to calling out the troops of his division or brigade, the powers conferred in this section upon the governor; but, if the call shall be disapproved by the governor, the troops so called into service will be immediately disbanded; such call for any portion of the organized militia, shall be made by an order issued and directed to the commanding officer of the company, battalion, regiment, brigade, or division, which is so called into service, designating in such order the particular troops called, the time and place of rendezvous, and the officer to whom they shall report. If such order be directed to a major-general of division, it will be immediately communicated to the brigadier-generals of his divisions, and by them to all the officers of their respective brigades, and any officer receiving such order will rendezvous and report for duty as herein directed; and any officer commanding an organized volunteer company, or battalion, or receiving such order, will immediately proceed to notify the same to each individual of his command, by personal notice, or by publication in some newspaper, or by usual posting in public places of the county or counties from which the call is made; and such officer shall attend, in person, or by deputing an officer of the organized militia, in his place of rendezvous, and take the names of all volunteers for service under such call, and, if the number of such volunteers shall be sufficient to form one or more companies, or battalions, according to the provisions of this act, he shall immediately call and superintend the election of the officers of such companies or battalions, which elections shall be conducted in the manner prescribed in this act for the elections of officers of volunteer companies and battalions, except as to the publications of notice of such election; a proclamation of the call of such election made by the officer calling it, at the place of rendezvous, being deemed a sufficient notice: but the commander-in-chief shall have authority, if he shall deem it expedient, to direct that portion of the volunteers so presenting themselves, to be assigned to organized volunteer companies or battalions already in active service, whose numbers are less than the full compliment prescribed in this act, after which those volunteering shall organize and elect as herein described.

SEC. 34. If the number of volunteers, so presenting themselves at the place of rendezvous, shall not be sufficient to satisfy the call of the commander-in-chief, the brigadier-general of the brigade in which such call is made, shall promptly proceed to draft from the enrolled militia of his brigade, a suffi-

Drafting,
when neces-
sary.

cient number of men to satisfy said call, and this draft shall be made by putting the names of all the enrolled militia of the county, or counties, from which the order directs the forces to be raised, into a box, and drawing therefrom a sufficient number of names to satisfy the call; the persons whose names are so drawn, will be summoned by some officer, or officers, appointed for that purpose by the brigadier-general, in the manner prescribed by law for the summoning of witnesses in civil cases, the time and place of rendezvous, as ordered by the brigadier-general, being stated in the summons. It shall be the duty of the major-general to be present, and to superintend the drafting of the enrolled militia, under any call by the commander-in-chief, but his presence shall not be necessary to give validity to the proceedings. In case of the absence or inability of the brigadier-general, the officer next in rank of the brigade, or, in default of any officer of that brigade for duty, the major-general of the division, or, in his default, the commander-in-chief, shall designate some officer to perform the duties prescribed to such brigadier-general, with respect to making such drafts, and, as soon as a sufficient number of such drafted men, shall have appeared at the rendezvous to form a company, or companies, they shall proceed to the election of their company officers, in the manner prescribed in section thirty-six of this act.

Vacancies
how filled

SEC. 35. Any company or companies, of the enrolled militia so drafted, and organized, may, by direction of the commander-in-chief, be enrolled and mustered into any battalion of the organized militia, having less than eight companies, and any drafted men of the enrolled militia, not organized into companies, may, at the discretion of the commander-in-chief, be enrolled and mustered into any existing company of organized or enrolled militia, not having the full number authorized by law, and which has already been called into active service. If the enrolled militia, when drafted into service, shall fail to elect to any office designated in such call for an election, in the manner, and at the time appointed, as provided in this act, such vacancy, or vacancies, shall be filled by appointments made by the commander-in-chief, and any company, or companies, of drafted militia, not assigned to, and mustered in any incomplete battalion of the organized volunteer militia, shall be organized into battalions or regiments, the field officers of which shall be appointed by the commander-in-chief; such appointments being made in all cases, where, in the opinion of the commander-in-chief, suitable persons can be obtained from the officers of the organized volunteer militia of this territory.

Organizat'n
of brigades
and divisions

SEC. 36. Where troops are called into active service, from different brigades or divisions, and the number so called into active service, shall not be more than sufficient to constitute one complete brigade, or one complete division, the commander-in-chief shall so organize them, and shall designate the par-

ticular brigadier-general, or major-general, for the command of the brigade or division so organized.

SEC. 37. The commission of any officer called into active service, shall continue until he shall be disbanded by the order of the commander-in-chief; *provided*, that such commission shall not be vacated by resignation, dismissal, or revocation, as provided in this act. All vacancies of officers and non-commissioned officers, in active service, shall be filled by appointment, or promotion; the first, by the commander-in-chief, and the second, by the commanding officer of the battalion, or of the company, in case such company forms no part of any battalion. In filling such vacancies of commissioned officers, the commander-in-chief shall, as a general rule, promote by seniority, or appoint, on the recommendation of their superior officers, those in active service.

Commissions
to continue
until dis-
banded.

SEC. 38. Any officer, non-commissioned officer, musician, artificer, or private, of the organized or enrolled militia of the territory, who shall neglect, or refuse [to] rendezvous and organize, when ordered out by the commander-in-chief, shall be deemed guilty of disobedience of orders, and shall be tried and punished by a court-martial.

Refusing to
rendezvous.

Penalty.

SEC. 39. Any private of the organized militia, and any person of the enrolled militia, called or drafted into service under the provisions of this act, may furnish, as a substitute, any person fit for military duty, who has not been called or drafted into service.

Substitutes.

SEC. 40. The commander-in-chief shall order a public parade of all the organized militia of the territory, on at least two days of each year; such parades to be held within the limits of the brigade to which such troops respectively belong; and such public parades shall be reviewed by the commander-in-chief, or, in his absence, by the major-general of division, or by the officer of the brigade, of the highest rank present. Immediately after such troops have been reviewed, they shall be inspected by the inspector-general, or, in his absence, by the division or brigade inspector; and such inspecting officer, after a minute inspection of the dress, and military bearing of the field officers and commissioned staff, and the officers of companies, and the arms, accouterments, and dress, of each soldier, will report the result of such inspection to his commanding officer.

Parades and
inspection.

SEC. 41. The rules of discipline and regulations of the army of the United States, shall, so far as the same may be applicable, constitute the rules of discipline and regulations of the organized militia of this territory; and the rules and articles of war established by congress, for the army of the United States, shall be adopted, so far as they may be applicable, for the government of the militia of Nevada Territory, in active service.

Rule of
discipline.

SEC. 42. The commander-in-chief will appoint courts-mar-

Courts-martial, how appointed.

tial for the trial of general officers, and all officers of the staff of the commander-in-chief; the major-generals of divisions will appoint courts-martial for the trial of all staff officers of their divisions and brigades, and for the field and staff officers of battalions and regiments of their respective divisions; and brigadier-generals will appoint courts-martial for the trial of all captains and commissioned officers under that rank, in their respective brigades; the commanding officers of regiments and battalions will appoint courts-martial for the trial of all non-commissioned officers, musicians, artificers, and privates, of their respective regiments and battalions. The officer appointing a court-martial, will revise the proceedings, and approve or disapprove the sentences of such courts-martial, and will direct the execution of such sentences, or mitigate the punishment, or pardon the person or persons convicted; but the person or persons so sentenced, may apply to the commander-in-chief to revise the proceedings, and to disapprove them, or pardon the offense; in which case, the officer approving the sentence, will transmit the proceedings in such case to the commander-in chief, and the execution of the sentence shall be suspended until the proceedings shall be returned, with the decision thereon. Courts-martial, appointed under the provisions of this act, shall be organized in like manner, and be subject to the rules and regulations governing courts-martial in the United States Army; they shall have the same power to compel the attendance of witnesses, when duly summoned by the judge-advocate, to preserve order in and about the court-room, during their session, and to punish contempt, as the judges of the district courts have, under the laws of this territory.

Appeals.

Removal, or absence.

SEC. 43. Any commissioned officer of a brigade or division, who shall remove his residence from the limits of his brigade, or division, will be deemed to have resigned his commission; and any major-general, or brigadier-general, who shall absent himself from the territory for more than three months, without the permission of the commander-in-chief, shall be deemed to have resigned his office.

Pay and allowance.

SEC. 44. Whenever any of the militia of this territory shall be called into active service, for the space of more than one week, they shall receive the same pay and allowances as United States troops serving in California. Any general, or field officer, being called into active service, such call shall be deemed to include all the officers of their respective staff. In case of a division, or part of a division, is called into active service, the commander-in-chief shall be authorized to put upon active service one of his aids-de-camp.

Return of arms, etc.

SEC. 45. When the commander-in-chief shall order the return to the territory of any arms, equipments, military stores, or other military property [belonging to the territory, such arms and military property] shall be immediately delivered to the officer authorized in such order to receive it, he receipting

for the same, and describing their condition in such receipts; and, if the property mentioned in such order, shall not be promptly delivered, as directed, the officer named in such order [is hereby authorized] to take immediate possession of the same in the name of the people of the United States and territory of Nevada; and, any person resisting such officer in the performance of this duty, shall be deemed guilty of a misdemeanor, punishable by imprisonment for not more than six months in the territorial prison, and shall be subject to a fine not exceeding five hundred dollars, to be recovered by an action brought by the district attorney in the name of the people of the United States and territory of Nevada, and be paid into the treasury as a part of the general fund.

SEC. 46. The commander-in-chief, adjutant-general, and the auditor of the territory, shall constitute a territorial board of military auditors. The commander-in-chief shall be president, and the adjutant-general shall be secretary of said board.

Board of
military
auditors.

SEC. 47. The board of military auditors shall have a seal, an impression of which shall be deposited by the secretary of the board in the office of the territorial treasurer, and be attached to all orders drawn upon the general fund.

Seal.

SEC. 48. No money shall be paid out of the general fund of this territory by the territorial treasurer, upon the order of the board of military auditors, except as provided in the foregoing section of this act; said order shall specify, on its face, the objects for which such money is paid, and to whom, and the amount duly entered in a book to be kept by the secretary of said board of military auditors.

Form of
money order

SEC. 49. It shall be the duty of said board of military auditors, to audit and pay all reasonable expenses incurred by volunteer companies in the service of this territory, and officers attached to the same, and all other claims required under the provisions of this act; and the territorial treasurer is hereby required to pay the same out of any moneys in the general fund not otherwise appropriated. No company shall be deemed in the service of the territory, so as to be entitled to the benefit of this section, unless the same has been called out in accordance with the provisions of section thirty-nine of this act.

Duty of
board.

SEC. 50. Each and every military officer of this territory, who shall be commissioned by the governor, shall, on receiving his commission, pay to the adjutant-general of the territory the sum of five dollars, the receipt for which shall be indorsed upon the commission; and all moneys so received by the adjutant-general, shall be paid into the treasury of the territory at the end of every month, and shall constitute a part of the military fund of the territory; *provided*, that officers in active service shall receive their commissions free of cost.

Fees for
military
commission.

SEC. 51. The secretary of the territory shall, under the direction of the governor, prepare and keep in his charge all blank military commissions. He will issue, from time to time,

Duties of
secretary of
treasury.

to the adjutant-general, such blank commissions as he may require for use, charging him with the same.

Brigades,
composed of.

SEC. 52. The organized and enrolled militia of this territory, shall be organized into one division, and two brigades, as follows: the counties of Humboldt, Lake, Churchill, Lyon, and Storey, shall compose the first brigade; the counties of Washoe, Ormsby, Douglas, and Esmeralda, shall consist [compose] the second brigade.

To attach
new counties

SEC. 53. Any and all new counties which may hereafter be organized in this territory, shall be attached to the respective brigade and division in which the larger portion of said new county is now located.

Civil officers
in certain
cases to con-
trol troops.

SEC. 54. Whenever any portion of the organized or enrolled militia, shall have been called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of this territory, or of the United States, it shall be competent for the commander-in-chief, or the general acting in his place, as provided in section thirty-nine, to place such troops under the temporary direction of the sheriff of any county, or of any marshal of the United States, and if, in the opinion of such sheriff or marshal [it shall become necessary that the troops so called out shall fire, or charge, upon any mob, or body of persons assembled to break, or resist, the laws, such civil officer] shall give a written order to that effect, to the superior officer present in the command, who will at once proceed to carry out the order, and shall direct the firing and attack to cease, only when such mob, or unlawful assembly, shall have been dispersed, or when ordered to do so by the proper civil authority. No officer, who has been called out to sustain the civil authorities, shall, under any pretense, or in compliance with any order, fire blank cartridges upon any mob, or unlawful assembly, under penalty of being cashiered by sentence of a court-martial; *provided*, that nothing in this section shall be construed as prohibiting any such troops from firing, or charging, upon such mob, or assembly, without the orders of such civil officers, in case they shall first be attacked or fired upon, or forcibly resisted in discharging their duty. When the commander-in-chief, or general acting in his place, shall call troops into active service, for the purpose mentioned in this section, and shall not place them under the temporary direction of any civil officer, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob, or unlawful assembly.

Collection
of fines.

SEC. 55. All fines legally imposed by a court-martial, lawfully constituted, after the proceedings and findings of said court in the premises have been approved, as prescribed by this act, shall be, and the same are hereby made, collectable by law. And any person failing to pay the same, shall be proceeded against by the district attorney, in the name of the people of the United States and the territory of Nevada, as for

ordinary debts, in any court of competent jurisdiction of the county; and a copy of so much of the finding and approval, as relates to imposition and approval of such fine, certified by the officer authorized by law to approve the same, shall be received as evidence in the case. And if judgment be obtained, it shall be collected as in ordinary cases, and shall be paid into the county treasury, as belonging to the general fund of this territory, and to be accounted for as such.

SEC. 56. The commander-in-chief may, from time to time, make and publish rules, regulations and orders, for the government of the militia of this territory, in accordance with the provisions and spirit of this act. Regulations.

SEC. 57. Any volunteer company may, on its organization, or thereafter, adopt a distinctive name, but shall be known by a particular letter or number, in the battalion or regiment to which it belongs. Names of companies.

SEC. 58. No person shall be a member of two companies at the same time; and any member of a company who removes beyond the limits of the county, shall be considered as having been discharged from such company. Members of company.

SEC. 59. In the cases of military taxes and fines assessed and charged against a minor, the parent, or guardian, shall be held to pay. In case of minors, who are orphans, the commander-in-chief shall have power to remit any military taxes or fines. Minors.

SEC. 60. In the absence of any appropriate commander, the next in rank in the command of troops, where not otherwise provided in this act, shall succeed to his authority. Absence of commander.

SEC. 61. Every senior, in his appropriate command, shall have authority to control the actions of his junior, in accordance with the principles of military subordination, under the laws and usages that govern the United States Army. Authority of senior.

SEC. 62. Any officer cashiered by sentence of a court-martial, shall be precluded thereby from holding any commission in the military service of the territory, except the sentence be remitted by the commander-in-chief. Cashiered officers.

SEC. 63. No non-commissioned officer, artificer, musician, or private, expelled from his company, or dismissed from service for any disgraceful cause, shall be permitted to again enter any volunteer company, except the offense be pardoned by the commander-in-chief. Expulsion.

SEC. 64. No officer, inferior in grade to a regimental or battalion commander, shall have power to grant discharges to non-commissioned officers, artificers, musicians, or privates, in active service; but commanders of companies of the organized militia, when not in active service, may issue certificates of service and discharges. All discharges shall be in writing, and shall set forth fully the cause of the discharge, and shall be signed by the officer granting the same. Discharge.

SEC. 65. Any officer resigning his commission, shall do so Resignation.

Election of officers.

in writing, and transmit the same through his immediate commanding officer, who will make his indorsements thereon, and the resignation shall go into effect when accepted by the commander-in-chief, and not before. Vacancies of commissioned officers of organized companies and battalions (not in active service), caused by resignation, death, dismissals, or removals, or by the expiration of the term fixed by the rules and regulations of such company or battalion, or by any other cause, shall be filled in accordance with the provisions of this act. Elections of company officers shall be presided over by an officer appointed for that purpose by the brigadier-general, and such presiding officer shall report the result of such election to the officer appointing him, which report shall be transmitted to the commander-in-chief, who shall issue commissions in accordance therewith; *provided*, however, that when the same officer shall be re-elected, no new commission shall be issued, but the officer so re-elected shall continue to hold under his original commission.

Vacation of commission.

SEC. 66. The commission of any staff officer, whose term of office depends upon the pleasure of the officer by whom he is appointed, shall, when such officer is not in active service, be considered as vacated upon the qualification of his successor, and shall be so noted upon the proper books, or rolls, kept in the office of the adjutant-general of the territory.

May disband companies.

SEC. 67. The commander-in-chief is authorized, at any time, by issuing his orders to that effect, to disband any portion of the organized volunteer forces, or of the enrolled militia, mustered into service, which may evince a mutinous, disorderly, or disobedient spirit, and to deprive them of arms, a copy of which order shall be transmitted to the clerk of the probate court, or courts, of the county, or counties, in which such force was raised; after which, it shall be a misdemeanor, in any person so disbanded, to appear with territorial arms in his possession, or as any portion of the organized volunteer militia, or of the enrolled militia in active service, until again drafted, or regularly mustered, into service, under penalty of not less than ten, nor more than one hundred dollars, for each offense; and such person shall be proceeded against by the district attorney, in the name of the people of the United States and of the territory of Nevada, before any competent court of the county where such person may happen to be; and all fines so recovered and collected, shall be paid into the treasury, as a part of the general fund.

Uniform.

SEC. 68. Every company, battalion, or regiment, of organized militia of this territory, may adopt a uniform for itself, which shall be subject, however, to the approval of the commander-in-chief, on report of the inspection officers made through the proper channels of communication; and no uniform, which is not thus approved, shall be worn when on duty.

Same.

SEC. 69. The uniform of all general officers, and members

of their staff, and all other officers not required to wear the distinctive uniform of their regiment, or corps, shall be similar to that of the corresponding grades and corps in the United States Army, with such modification as may be directed by the commander-in-chief, for adapting it to territorial troops.

SEC. 70. The systems of instruction in tactics, prescribed for the different arms and corps in the United States army, shall be followed in the military instruction and practice of the militia of this territory, and the use of any other system is forbidden. Tactics.

SEC. 71. The president of any general court-martial, assembled in pursuance of the provisions of this act, may make a requisition upon the sheriff of the county in which the session is held, for a deputy-sheriff to attend upon such court as provost-marshal, and such deputy-sheriff shall receive for his attendance the same pay and fees, and be subject to the same responsibility, as when attending upon the sessions of a district court. And the president of any regimental, battalion, or company court-martial, may make a requisition upon any constable of the county to act as provost-marshal of such court, and such constable shall receive the same pay and fees as in the justice's court; and the pay and fees of such deputy-sheriff or constable shall be paid, on the certificate of the judge-advocate, and warrant of the auditor of the territory, by the territorial treasurer, from the general fund, such account being first audited by the board of military auditors. Courts-martial.
Provost marshal of.

SEC. 72. When bands of music shall not have been organized for any regiment, battalion, or isolated company, in the manner provided in the regulation of the army of the United States, it shall be lawful for such regiment, battalion, or isolated company, through its commanding officer, to hire the services of any band of musicians, at their own expense, and the persons so employed shall, during the term of their engagement, be subject to the same laws and regulations that govern the military body with which they may serve. Bands of music.

SEC. 73. When any person, drafted for service, shall offer, at or after the time of rendezvous, a suitable substitute, of the age of twenty-one years, and such substitute shall consent, in writing, to subject himself to all the duties, fines, forfeitures, and punishment, to which his principal would have been subject had he personally served, he shall be accepted by the officer making such draft. And the same rule shall apply to substitutes offered by members of organized volunteer companies called into active service, the commanding officer of such company being the judge of the suitability of the substitute offered. And the person whose substitute shall be so accepted, shall be exempted from draft during the term of service of his substitute. Substitutes.

SEC. 74. No action shall be maintained against any member of a court-martial, or officer, or agent, acting under his Not to bring action ag'nst officer.

authority, on account of the imposition of a fine, or the execution of a sentence, on a person not liable to military duty, if such person shall have been duly summoned, and shall have neglected to appear and show his exemption before the court.

Courts of inquiry.

SEC. 75. Courts of inquiry may be ordered by the commander-in-chief, or by any major-general, or brigadier-general. Such courts of inquiry shall be governed by the same rules as similar courts in the United States Army, and they shall have the same power to preserve order, punish contempts, and compel the attendance of witnesses, as courts-martial have.

Fees of sheriff, etc.

SEC. 76. For all services under this act, sheriffs, constables, and jailors, shall receive like fees as for similar services in other cases, and shall be subject to the same penalties for any neglect of duty.

Seal of Adjutant-general.

SEC. 77. The adjutant-general shall have a seal of office, to be approved by the commander-in-chief, and all copies of records, or papers, in his office, duly certified and authenticated under the seal, shall be in evidence, in all cases, in like manner as if the originals were produced.

Hours of military duty.

SEC. 78. On the days of military parade, appointed by the commander-in-chief, the militia so called out and doing military duty, shall be considered to be under military discipline, from the rising to the setting of the sun; and no officer, non-commissioned officer, musician, artificer, or private, belonging to the same, during the time aforesaid, shall be subject to be arrested on any civil process.

Encroachment

SEC. 79. The commanding officer of any parade, review, or drill, and the officer in charge of any rendezvous, may cause the grounds selected for that purpose to be marked, or designated, in such a manner as not to obstruct the passage of travelers on any public highway; and if any person, during the occupation of such ground for such military purposes, shall encroach upon such bounds, and enter upon such ground without permission of such officer commanding, or in charge, he may be put and kept under guard, by the order of such commander, until the setting of the sun of the same day, and, moreover, shall be subject to arrest and punishment, by any court of competent jurisdiction, for a breach of the peace.

Insulting of officers.

SEC. 80. If any person shall intercept, molest or insult, by abusive words or behavior, any officer, non-commissioned officer, or soldier, while in the performance of his military duty, he shall be immediately put under guard, and kept, at the discretion of the commanding officer of the forces engaged in the performance of such military duty, until the setting of the sun of the same day on which the offense shall have been committed; and, moreover, shall be subject to arrest and punishment, by any court of competent jurisdiction, for a breach of the peace.

Disobeying orders.

SEC. 81. Any officer, non-commissioned officer, or soldier, on military duty, who shall disobey the legal orders of his

superior, use any reproachful or abusive language to his superior, or misbehave or demean himself in an unofficer or unsoldierlike manner, shall be immediately arrested, if an officer, and if a non-commissioned officer, or soldier, shall be disarmed and put under guard, and shall be tried and punished by a court-martial, according to law and military usage.

SEC. 82. In case of parades, reviews, inspections, or musters of the troops of any brigade, any companies not organized into battalions, shall be temporarily organized into a battalion for the duties of the day, and the battalion so temporarily organized, shall be commanded by the officer senior in rank of the companies composing it. It shall be optional with any such unattached companies, to attach themselves for the day to any organized battalion or battalions, or to organize a temporary battalion; but no such temporary battalion shall be organized of less than three companies, if there be any organized battalion or battalions present on duty to which they may attach themselves, without exceeding the compliment fixed by this act. If such unattached companies shall not attach, or organize themselves, in accordance with the provisions of this section, the officer commanding the brigade for the day shall order such assignment or organization.

Temporary
organizat'n.

SEC. 83. Horses, and equipments of officers of mounted companies, and all company property of uniformed companies organized under this act, shall be exempt from execution.

Property
exempt.

SEC. 84. This act shall take effect on and after its passage.

CHAP. XL.--*An Act creating Boards of County Commissioners, and defining their duties.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That there shall be established in each organized county in this territory, a board of commissioners, to consist of three qualified electors, two of whom shall constitute a quorum to do business, to be elected by the qualified electors at the annual election, who shall hold their office for three years.

To be
elected.

Term of
office.

SEC. 2. The commissioners first elected in any county in this territory, shall serve for the term of one, two, and three years, to be by them determined by lot at their first session; and annually thereafter, one commissioner shall be elected, and shall continue in office three years; *provided*, that where there are three or more election districts in one county, there shall

Same.

not be two commissioners serving on the board from one precinct at the same time.

Vacancies. SEC. 3. Whenever it shall become necessary to elect a commissioner to fill any vacancy occasioned by death, resignation, or removal, the person elected shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is elected and qualified.

Oath of office of. SEC. 4. Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation, before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county in which he resides, and deposit a certificate thereof with the clerk of the board of commissioners of his county, to be by him filed in his office, and shall take and subscribe the oath required by law.

Sessions of. SEC. 5. The board of commissioners shall hold four sessions annually, at the seat of justice of their respective counties, commencing on the first Mondays of April, July, September, and December, at all of which they shall transact any business which may be required by law; *provided*, that if the district court be in session on any of the above mentioned days, the commissioners shall meet on the Monday preceding, but no session shall be continued for a longer period than six days.

Clerk of. SEC. 6. The clerk of the county shall be the clerk of the board of county commissioners, and shall keep his office at the county seat, and attend their meetings, and keep a record of their proceedings, and the sheriff of the county shall also, by himself or deputy, attend and execute their orders.

Extra sessions. SEC. 7. The said board of county commissioners are hereby authorized to hold extra sessions, in case they may think the business of their county requires the same, and ten days' notice from any two of the commissioners to the third, and posting notices in three public places in the county, and by publishing the same in some newspaper, shall be considered a sufficient call for an extra session; *provided*, that no such extra session shall exceed three days.

Call of. SEC. 8. The commissioners shall each receive five dollars per day for each and every day that they may be necessarily employed in transacting the county's business, and twenty-five cents a mile for every mile traveled in going to and returning from the meeting of said board, to be computed by the most usually traveled route.

Compensat'n of, mileage. SEC. 9. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, it shall be postponed to a subsequent meeting.

Division of. SEC. 10. The commissioners of each county shall have and use a seal for the purpose of sealing their proceedings; and copies of the same, when signed and sealed by said commissioners, and attested by their clerk, shall be presumptive evi-

Seal of.

dence of such proceedings in the trial of any cause in any court of this territory; and until such seal shall be provided, the private seal of the chairman of such board of county commissioners, shall be considered a seal.

SEC. 11. The several boards of county commissioners are authorized and required: First. To provide for the erection and repairing of court-houses, jails, and other necessary public buildings for the use of the county. Second. To lay out, discontinue, or alter county roads and highways within their respective counties, and to do all other necessary acts relating thereunto. Third. To license and fix the rates of ferriage and toll on toll roads and bridges; to grant grocery and other licenses authorized by law to be by them granted. Fourth. To fix the amount of taxes to be assessed according to the provisions of law, and cause the same to be collected. Fifth. To allow all accounts chargeable against such county, not otherwise provided for, and to audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county, or appropriated to its benefit. Sixth. To have the care of the county property, and the management of the county funds and business, except in cases otherwise provided for, and shall have no other powers except such as are, or may be given by law.

Powers and duties of.

SEC. 12. Real estate, belonging to any county, may be sold by an agent, duly appointed by the order directing such sale, who shall have the same powers as a commissioner appointed to sell real estate by the district or probate court.

Sale of county property.

SEC. 13. The board of county commissioners shall cause to be recorded in a book, to be kept for that purpose, all their proceedings, and their determinations touching all matters properly cognizable before them; and all books, vouchers, papers, and accounts, touching the business or property of the county, shall be carefully kept by the clerk, and open to the inspection of every one.

Records of.

SEC. 14. The commissioners aforesaid, at their first session after the annual election in each and every year, shall elect one of their number to preside at the meetings of the board, and he shall sign all documents requiring the signature of the board, and the signature of such person, as chairman of the board of commissioners, shall be as legal and binding as if the whole board had affixed their names; *provided*, that in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board; shall be signed by both members present.

Chairman of board.

Absence of.

SEC. 15. It shall be the duty of the board of county commissioners, to provide all books necessary for the use of the board of county commissioners, the office of the county auditor, the clerk of the district court, the probate court, and county treasurer; and also, to provide convenient desks for the pre-

To furnish books, etc. for county.

servation and security of the books and other documents in the several offices.

To examine
accounts of
county
officers.

SEC. 16. At the July session, the board of county commissioners shall examine and compare the accounts and vouchers of the county auditor and county treasurer, count the funds in the county treasury, and shall make a full and accurate statement of the receipts and expenditures of the preceding year, and shall cause the same to be posted up at the court-house door, and at two other public places in their county, and if there shall be no court-house, then at three public places in their county, and shall publish the same in some newspaper of such county, if there be any.

Relative to
elections.

SEC. 17. It shall be the duty of the board of county commissioners, at their first session, to divide their respective counties into election precincts, in such a manner as shall be most convenient for the population, and appoint a place for holding the elections therein; and they shall create new precincts from time to time, as the population may require, and, on the petition of ten voters, resident more than ten miles from any place of election, it shall be the duty of the board of county commissioners, to establish a precinct, and appoint judges of election therefor.

To superin-
tend poor.

SEC. 18. The boards of commissioners of the several counties of this territory, are vested with the entire superintendence of the poor in their respective counties.

County
credits.

SEC. 19. The county commissioners of their respective counties, shall have power to compound for a release, in whole or in part, of any debt due to their county, and for the use thereof, when, in their opinion, the interests of the county will not be prejudiced thereby; except in cases when they, or either of them, are personally interested.

Interest of,
in contracts
prohibited.

SEC. 20. No county commissioner shall, directly or indirectly, as contractor, be concerned in any contract for work to be done, or materials to be furnished, for the county, under the penalty of five hundred dollars, to be recovered by an action at law, for the use of the county; and such commissioner shall, moreover, forfeit any compensation he was to receive on such contract.

To admin-
ister oaths.

SEC. 21. The commissioners are authorized and empowered to administer all oaths or affirmations, necessary in discharging the duties of their office.

To provide
place for
courts.

SEC. 22. Until proper buildings are erected, at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

Appeals
from.

SEC. 23. Any person may appeal from the decision of the board of commissioners, to the next term of the district court of the same county; such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the commissioners that the appeal is taken, at least ten days

before the first day of the next term of the court appealed to; which notice shall be in writing, and shall be delivered personally to the commissioners, or left with the clerk of the board, and the party appealing shall give bond to the county, with one or more sureties, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him, on such appeal in the said district court.

SEC. 24. In letting contracts, the commissioners shall advertise such contracts to be let, stating the plans and specifications in full, in the newspaper published nearest the county-seat, for the period of one month, and by five notices, posted in as many public places, in the county, and such contract shall be let to the lowest responsible bidder, subject to the provisions of the twenty-first [twentieth] section.

To advertise
contracts.

CHAP. XLI.—*An Act concerning Coroners.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The justices of the peace, in their respective townships, shall discharge the duties of coroners.

Justices of
peace to
act as.

SEC. 2. When a justice of the peace, acting as coroner, has been informed that a person has been killed, or committed suicide, or has suddenly died under such circumstances as to afford reasonable ground to suspect that the death has been occasioned by unnatural means, he shall go to the place where the body is, and summon no less than six, nor more than twelve persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body is, to inquire into the cause of the death.

Inquest of.

To summon
jurors.

SEC. 3. Every person summoned as a juror, who shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding one hundred dollars, to be recovered by the justice of the peace acting as coroner, in his official capacity, in any court of competent jurisdiction, and paid by him into the county treasury.

Neglect to
appear when
summoned.

Forfeit.

SEC. 4. When six or more of the jurors attend, they shall be sworn by the justice of the peace, acting as coroner, to inquire who the person was, and when, where, and by what means, he came to his death, and into the circumstances attending his death, and to render a true verdict thereon, according to the evidence.

Jurors,
oath of.

SEC. 5. The justice of the peace, acting as coroner, may issue subpoenas for witnesses, returnable as he may direct, and

Witnesses.

served by himself, or such person as he may direct. He must summon, and examine as witnesses, every person who, in his opinion, or that of any of the jurors, has any knowledge of the facts, and, he may summon a surgeon or physician to inspect the body.

Witness may be attached. SEC. 6. Any witness, failing to obey the justice of the peace, acting as coroner's subpoena, may be attached and fined for contempt of such jury, in like manner as in a justice's court.

Verdict, what to state. SEC. 7. After inspecting the body, and hearing the testimony, the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth the name of the deceased, when, where, and by what means he came to his death; if by criminal means, the name of the person causing the death.

Testimony. SEC. 8. The testimony, at such inquest, shall be reduced to writing by the justice of the peace, acting as coroner, or as he may direct; and, by him, without delay, filed in the office of the district court of the county.

To secure arrests. SEC. 9. If the jury find that the person was killed by another, under circumstances not excusable or justifiable in law, and the party committing the act be not in custody, the justice of the peace, acting as coroner, shall issue a warrant, signed by him, with his name of office, for the arrest of the accused.

Warrants of. SEC. 10. The justice of the peace, acting as coroner's warrant, may be served in any county of the territory, and returned by the officer serving before a magistrate of the county in which it is issued; the officer receiving such warrant, shall have the same power under the warrant, as by virtue of a warrant from any court or magistrate of the territory.

Money and property of deceased. SEC. 11. It is hereby made the duty of the justice of the peace, acting as coroner, to deliver, without delay, to the treasurer of the county, any money or property which may have been found with the deceased, unless taken from his possession by legal authority; and, if the justice of the peace, acting as coroner, fail to pay or deliver such money or property to the treasurer, the treasurer may recover the same by action at law.

Disposition of moneys, etc. SEC. 12. Upon payment of money into the treasurer's office, in such case, he shall place it to the credit of the county. If it be property, he shall proceed, upon reasonable notice, to sell the same at public sale, and place the proceeds to the credit of the county.

Same. SEC. 13. If the money be demanded within six years, the treasurer shall pay the same to the person legally authorized to receive it, after deducting the expenses of the inquest, and of the county, in the matter, but the same may be paid at any subsequent time, to the representatives of the deceased, upon an order from the tribunal invested with the power to allow claims against the county.

SEC. 14. The justice of the peace, acting as coroner, shall, before his claim is allowed for such inquest, file with such ^{Same.} claim, an affidavit, setting out the amount of money or property found with the deceased, and the disposition of the same by him.

SEC. 15. After the inquest, if no one take charge of the body, it shall be the duty of the justice of the peace, acting as coroner, to cause the same to be decently buried, and pay the ^{Burials, expense of.} expense thereof from any money found with the deceased; if no such money is found, then the same shall be charged against the county. The justice of the peace, acting as coroner, shall receive the sum of five dollars out of the county treasury for attending the burial of such body.

CHAP. XLII.—*An Act to create the Virginia City Gas Company.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Henry C. Smith, and Charles Rawson, and their associates and successors, are hereby created and constituted a ^{Corporators.} corporation, to be known and designated as the Virginia City Gas Company.

SEC. 2. The said Virginia City Gas Company shall, for and during the period of ten years next ensuing the approval of ^{Franchise.} this act, have and possess the exclusive privilege of supplying the city of Virginia, in the territory of Nevada, and the inhabitants, residents, and people of said city, with illuminating gas.

SEC. 3. The said company shall have authority to erect within the corporate limits of the city of Virginia, the necessary buildings, works and machinery, for the manufacture or production of illuminating gas; to make the necessary excavations in the public streets of said city, for the purpose of laying gas-pipes therein, and to reopen the said excavations for replacement or repair of said pipes; *provided*, that the streets of said city shall not be obstructed to an unnecessary degree, or for an unnecessary period of time, while said pipes are being laid. ^{Powers of corporation.}

SEC. 4. The said Virginia City Gas Company shall, within ^{Organizat'n.} three months from and after the approval of this act, proceed to organize themselves under the general act of incorporation, if any such act should become a law, and be then in force in Nevada Territory, and shall be liable for all the duties and

obligations, and subject to all the penalties in such general act of incorporation contained or expressed.

Constructi'n
of works.

SEC. 5. The said company shall, within the period of six months from and after the approval of this act, commence the construction of the works necessary for the manufacture or production of illuminating gas, and shall, within twenty months from and after the approval of this act, complete the same.

To supply
gas to city.

SEC. 6. It shall be compulsory on said company to provide said city, or cities, with sufficient gas to supply five (5) burners for the public streets, for the first year; for the second year, sufficient gas to supply ten (10) burners; and for each year thereafter, sufficient gas for fifteen burners: the lamps, burners, and lamp-posts, to be provided by the proper authorities.

CHAP. XLIII.—*An Act to audit the Claim of John F. Kidder, for Surveying the Boundary Line between California and the Territory of Nevada.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Claim
audited.

SECTION 1. That the account and claim of John F. Kidder, deputy United States surveyor, for making survey of the boundary line between California and the territory of Nevada, from the initial point at Lake Bigler, to Honey Lake, be, and the same is, hereby audited and allowed as indebtedness against the territory.

Issuance of
warrant.

SEC. 2. It shall be the duty of the territorial auditor, as soon as said officer shall have been elected or appointed, to issue a warrant, payable out of the revenue, to said John F. Kidder, for the amount of five hundred and fifty dollars (\$550), of his claim. The said warrant shall draw interest from the time of its issuance, until paid, at the rate of ten per centum per annum.

How paid.

SEC. 3. It shall be the duty of the territorial treasurer, to pay said warrant out of any moneys not otherwise appropriated, collected into the treasury of the territory.

CHAP. XLIV.—*An Act to supply the City of Carson with Water, and to protect the City against Fires.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That John J. Musser, Jonathan Wilde, Sarah A. Blackburn, and John G. Kelly, and their associates, shall have the right for the term of fifty years, and the same is hereby granted to said parties and their assigns, to lay distributing water-pipes in any of the public streets or alleys of the city of Carson, and county of Ormsby; *provided*, said pipes shall be so laid down, as not to interfere or obstruct the public thoroughfares of said city [of Carson] and county of Ormsby.

Corporators.

Franchise.

SEC. 2. Said streets, or ways, in which said pipes may be laid, to be placed in the same good order and condition by the said John J. Musser, Jonathan Wilde, Sarah A. Blackburn, John G. Kelly, and their associates, as the same were before said pipes were laid down, at their costs and charge, and under the supervision of the superintendent of streets and highways, and to his satisfaction.

Streets, to be kept in good condition.

SEC. 3. The rate or price to be charged for water, shall be fixed by the county commissioners of Ormsby County.

Water rates.

SEC. 4. It shall be the duties of said parties to commence the said work within six months from the time of the passage of this act.

To commence works

SEC. 5. The city of Carson, or county of Ormsby, shall have the right, at any time after the expiration of five years from the passage of this act, on giving six months' notice of their intention to do so, to purchase all the works and franchise hereby granted to said parties, which may be in use for the purpose of supplying water to the people of said city and county, at their true value, to be determined by two commissioners selected by the company, two by the county commissioners, and one selected by the four commissioners; *provided*, the town of Carson City, for fire purposes, the fire companies, and fire department, shall be furnished water free of charge; and further *provided*, the works sufficient to supply said city with good and pure water, shall be completed within two years from the passage of this act; and *provided*, the board of county commissioners of Ormsby County shall, at all times, have power to order any improvements, or repairs, in the water works of the parties owning the franchise hereby granted, which they may think necessary for the health or convenience of the people of the said town of Carson; and *provided*, further, if the said parties, owners of the said franchise, shall fail, or refuse to comply with any order of the said board of county commissioners lawfully made, it shall be unlawful for them to

Right to purchase.

Fire purposes.

Completed.

Repairs.

collect or receive any charge for water, until such order shall have been complied with.

CHAP. XLV.—*An Act relative to District Attorneys.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

To give
bonds.

SECTION 1. That there shall be a district attorney for each judicial district of this territory, appointed as provided by law, who shall, before entering upon the duties of his office, take the oath provided by law, and shall execute a bond, with two or more sureties, to the territory, for the faithful discharge of the duties of his office, in the penal sum of five thousand dollars, which bond shall be approved by the judge of his district, and filed in the office of the secretary of the territory.

Duty of.

SEC. 2. It shall be the duty of the district attorneys, in their respective districts, to prosecute all criminal cases and all civil cases, in which any county of his district, or the territory, is a party.

Salary.

SEC. 3. Each district attorney shall receive an annual salary of two thousand dollars, payable quarterly, out of any money in the territorial treasury not otherwise specifically appropriated by law; and it shall be the duty of the territorial auditor, to draw his warrant on the treasurer for the same; and if said warrants are not paid, on presentation, then the same to draw interest, at the rate of ten per cent. per annum, until paid.

Fees.

SEC. 4. Each district attorney, in addition to the salary provided for in the last preceding section, shall receive ten per cent. on all moneys collected by him and paid over to the territory, or any county thereof. He shall also receive, to be paid out of the county properly chargeable with the expenses of the case, on conviction of a capital offense, fifty dollars; on conviction of any other felony, twenty-five dollars, and on conviction of a misdemeanor, in the district court, fifteen dollars.

Further
duties.

SEC. 5. It shall also be the duty of the district attorney, without charge, to attend the sessions of the supreme court, and to prosecute the cases therein pending from his district, and to give his official opinion to any territorial, county, or township officers, and also, without charge, to attend and prosecute in criminal cases before the justices of the peace of his district, when not engaged in the supreme or district courts.

CHAP. XLVI.—*An Act to Incorporate the Virginia City and Washoe Railroad Company.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows :

SECTION 1. That Henry A. Cheever, and associates, are hereby created a body corporate, by the name of The Virginia City and Washoe Railroad Company ; and by that name shall be, and hereby are, made capable, in law, to purchase, hold, and convey lands, tenements, and hereditaments, so far as may be necessary for the purpose of said railroad ; to grant, lease, or in any manner dispose of the same ; to contract, and be contracted with ; to sue, and be sued ; and to make, have, and use, a common seal. Corporators.
Powers of.

SEC. 2. The said corporation are hereby authorized and empowered to locate and construct a railroad, from Virginia City, commencing at a point near Cedar Hill, and running thence along the side hill, in a southerly direction, to the summit ; thence, in a westerly direction, by the most practicable route, to a point in Washoe Valley, near the town of Washoe, or Franktown ; with the privilege of extending said line north, to Washoe City, and south, so far as the mill known as Penrod's Sawmill ; also, from the summit, aforesaid, in an easterly direction, to some point near Gold Hill proper ; and they may cause such examination and survey to be made, as shall be necessary to ascertain the most advantageous route, and may adopt such route as they shall find most eligible for that purpose. Franchise.

SEC. 3. Said corporation may elect from their number, such directors and officers as they shall deem requisite to complete their organization, and carry on the business of said company ; and they shall have power to adopt such rules and by-laws for their government, as to them shall seem necessary ; and said rules and by-laws, when adopted, shall be binding on the members of said company. Organizat'n.

SEC. 4. The said company shall have the right of way upon any lands, to survey and lay down said road, not exceeding two hundred feet in width, except where it is necessary to have room for turnouts, sites for water buildings, conduits, and tanks, sites for depots and store-houses, machine and other shops, not exceeding one acre in a square, and the necessary extra tracks therefor ; and whenever it is necessary to have such lands, they shall have the right to enter upon, take and hold, such lands, and occupy the same, and also to enter upon any lands adjoining said road, and obtain therefrom sand, gravel, stone, and other materials, as may be necessary for the construction of said road. When the same shall not be given Right of way.

or granted to said company, the compensation to be paid there-
 for shall be ascertained in the following manner: Said com-
 Compensat'n
 for land. pany shall apply to a judge of the district court of the territory
 of Nevada, for the appointment of three commissioners, whose
 duty it shall be, at the earliest practicable time after their
 appointment, to proceed to examine and assess the damage
 which may be sustained by the several owners or claimants of
 Appraisem't
 of damages. the lands through which the road of said company is located,
 and the said commissioners, in assessing said damages, shall
 deduct therefrom the benefits which said lands receive by the
 construction of said road. It shall be the duty of said com-
 pany to give thirty days' notice of their application for the
 appointment of said commissioners, in one or more newspapers,
 published in each of the counties through which said road is
 laid out, and in case no newspaper is published in any one of
 said counties, then by posting up said notices in three public
 places in said county, thirty days, as aforesaid; and it shall be
 Notice of. the duty of such commissioners, to cause ten days' notice of
 their meeting to appraise the damages of any land through
 which said road may run, to be given to the owner or claimant
 thereof; and in case said owner or claimant shall be a minor, or
 insane person, then such notice shall be given to the guardian
 or guardians of such person. Either party feeling aggrieved
 by the decision of such commissioners, may appeal to the dis-
 Appeal to
 district
 court. trict court of the district in which said land may be situated,
 and said appeal shall be tried in the same manner as if com-
 menced therein; *provided*, that such company shall not in any
 manner be delayed in the construction of their road, by such
 appeal, but may proceed immediately with such construction,
 on paying into the office of the clerk of said court, the amount
 of money awarded to the owner or owners of said lands, and
 filing a bond with said clerk, to said owner or owners; binding
 said company to pay such sum as may finally be awarded
 against said company. The notice to be given by the commis-
 sioners to the owners of lands required by said railroad, shall
 be in writing, and delivered to said owner or owners, or left at
 Commis'rs'
 notice, how
 given. their usual place of residence, or, if non-residents of the county,
 then said notice shall be published in the nearest newspaper to
 where said land is situated, at least four weeks before making
 such appraisement.

SEC. 5. The said company may construct said railroad
 across any public or private road, highway, stream, or water-
 Obstruction
 of highways
 or streams. course, if necessary; but the said company shall restore such
 road, highway, stream, or water-course, to its former state, or in
 a manner not to impair its usefulness to the persons occupying
 the same, or to the public; *provided*, that nothing in this section
 is to be so construed as to allow said railroad to interfere in
 any way with any mining claim already located, or other pos-
 sessory rights already acquired, without just compensation
 therefor; *provided*, further, that said company shall, when

they pass through an inclosure, be compelled to build fences, one on each side of said railroad, thereby making the inclosure as perfect as before said railroad passed through said inclosure. To restore fences.

SEC. 6. If any person shall willfully obstruct, or in any way spoil, injure, or destroy, said railroad, or anything belonging thereto, or any materials to be used in the construction of any part thereof, or building fixture, or car erected or constructed, for the use of said road, such person shall be deemed guilty of a misdemeanor, and shall be punished accordingly, and shall also be liable to said company, for every such offense, in treble the damage occasioned thereby, to be recovered by civil action in any court having competent jurisdiction. Injury to railroad.

SEC. 7. The capital stock of said company shall be five hundred thousand dollars, and divided into shares of one hundred dollars each, which shall be deemed personal property, and transferable in such manner as may be provided in the by-laws of said company. And said company is hereby authorized, from time to time, to borrow such sums of money as may be necessary for completing, furnishing, or operating such road, and to dispose of their bonds in denominations of not less than five hundred dollars, for any amount so borrowed, and to mortgage their corporate property, or convey the same by deed of trust, to secure the payment of debts contracted by said company for the purpose aforesaid. Capital stock. To borrow money.

SEC. 8. Said road, and its appurtenances, shall be subject to the same rules of taxation as other property in the territory. Taxation.

SEC. 9. Said company shall organize, and do work on the said railroad, in amount equal to the building of three miles of said road, within one year from the passage of this act, and the second year, an amount equal to six miles; and complete the same within three years from the passage of this act, or this act shall be null and void. Commencement and completion of road.

SEC. 10. This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly, in any manner not destroying or impairing the vested rights of the said corporation, and shall be favorably construed in all legal and equitable proceedings for the accomplishment of the objects intended. Declared a public act.

SEC. 11. The privileges granted by this charter shall continue for the term of thirty years from the passage of this act. Term.

SEC. 12. This act shall take effect from and after its passage.

CHAP. XLVII.—*An Act concerning Jurors.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The probate judge, and the sheriff of the county *To be drawn.* in which a term of the district court is, or may be, authorized by law to be held, shall, at least ten days prior to the commencement of said term of court, select the names of two hundred persons, lawfully qualified to serve as jurors, from the assessment roll of such county, provided that number of names are contained on such roll; and the names of the persons so selected, after being written on separate slips of paper, shall be deposited in a box to be provided for such purpose, and from the names so deposited, the judge and sheriff aforesaid shall alternately draw the names of thirty persons, who shall constitute trial jurors for the next ensuing term of such district court.

Summons of. **SEC. 2.** The list of names so drawn, certified to by the judge and sheriff, as selected by them, shall thereupon be delivered to the clerk of the district court, who, upon the receipt of the same, shall immediately issue a *venire*, directed to the sheriff of the county, commanding him to summon the persons so named, as trial jurors for such term of court; and the sheriff shall summon such named persons at least three days prior to the convening of such term of court.

Venire, when returnable. **SEC. 3.** The *venire*, as provided for in section two of this act, shall be returned to the clerk of such district court, by the sheriff aforesaid, at least two days before the commencement of such term of the court; and such *venire*, after its return, shall be subject to the inspection of any officer, or attorney of the court.

Residue of jury list. **SEC. 4.** The box containing the residue of the names of the jury list, as aforesaid, shall, after such drawing, be locked up, and with the key deposited with the clerk of the district court for such county, and by him safely kept for future use, by the before named officers, or as further provided in this act.

Additional jurors. **SEC. 5.** When, at any time during a term of the district court, it shall become necessary to summon other jurors than as herein before provided for, the clerk shall, in open court, under the direction of the judge thereof, from such box draw a sufficient number of names, to constitute additional trial jurors during such term of court; *provided*, in case any such jurors so drawn reside at a great distance from the court, the court may, in its discretion, dispense with summoning such juror, and order another drawn instead thereof; and the clerk shall issue a *venire*, directed to the sheriff, for the summoning of such persons as trial jurors; and the sheriff shall proceed

forthwith to summon the same as such trial jurors, and with all possible diligence make return of his proceedings thereon.

SEC. 6. When, at any term of the district court, for the want of an assessment roll, or sufficient time is not permitted in which to prepare and draw the list of jurors, as provided heretofore in this act, or, when from any cause which may appear satisfactory to such district judge, such list has not been prepared, or drawn, or the sheriff has not summoned such jurors, or the names selected as jurors, placed in such box, shall be exhausted, it shall be lawful for such district judge and sheriff to prepare a list of the names of a sufficient number of persons competent to serve as trial jurors, and deposit such names in a box, and at any time during the term of the court, when a jury shall be required, names of persons shall be drawn therefrom by the clerk, as provided in section five of this act, and, from time to time, other names may be selected and placed in such box, and drawn therefrom, as herein before provided for, and summoned as such trial jurors; *provided*, that in the selection of the names to be deposited in such box, the name of no person from among the bystanders at such court shall be chosen and selected. Same.

SEC. 7. It shall be the duty of the probate judge, and any one of the county commissioners of the county, at least ten days prior to the assembling of a court authorized by law to inquire into public offenses, by the intervention of a grand jury, to select the names of twenty-four persons, eligible to serve as jurors; and, upon a *venire* being issued by the clerk of such court, the sheriff shall, at least two days prior to the meeting of the court, summons said persons to appear on the first day of the succeeding term, and from such panel the court shall select seventeen persons, who shall constitute such grand jury. Grand jurors

SEC. 8. When, from any cause, on the meeting of or during the term of a court authorized by law to inquire into public offenses by the intervention of a grand jury, and a grand jury is wanted, and there is not a sufficient number of jurors present to constitute a grand jury, or none has been summoned, or those summoned have been discharged, a sufficient number to complete such grand jury, or constitute a new grand jury, as the case may be, shall be selected and summoned in the same manner as is provided in section six of this act, for the selection of trial jurors. Same.

SEC. 9. Any person who is a qualified voter in this territory, shall be competent to serve as a grand juror, or petit juror. Who competent.

SEC. 10. The following persons shall be exempted from serving as grand or petit jurors, viz.: All priests and ministers of the gospel, attorneys, practicing physicians, all county, township, and territorial officers, editors, and regularly enrolled firemen in active service; not exceeding sixty-five in number to each company. Who exempted.

Penalty for
failing to
attend.

SEC. 11. Any person, summoned as aforesaid, to serve as a juror, who shall fail to attend and serve as such juror, unless excused by the court, shall be fined in any sum not exceeding two hundred dollars, at the discretion of the court, and be imprisoned in the county jail until such fine is paid.

CHAP. XLVIII.—*An Act to preserve the Purity of Elections, and to prevent Ballot-Box Stuffing.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Improper
possession of
ballot-box.

Punishment.

SECTION 1. That, if any person or persons, at any election, held by virtue of any law of this territory, in any ward of any city, or in any township, or election precinct, of any county in this territory, shall unlawfully, either by force, violence, fraud, or other improper means, obtain possession of any ballot-box, or any ballot or ballots therein deposited, while the voting at such election is going on, or before the ballots shall have been duly taken out of such ballot-box by the judges of election, according to law; such person or persons shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be imprisoned in the penitentiary, or territorial prison, and kept at hard labor, for a term not more than three, nor less than one year, at the discretion of the court.

Attempt to
take or
destroy
ballot-box.

Punishment.

SEC. 2. If any person or persons, at any election held by virtue of any law in the territory, in any ward of any city, or in any township, or election precinct of any county in this territory, shall unlawfully, either by force, violence, or fraud, or other improper means, attempt to obtain possession of any ballot-box, or any ballot or ballots therein deposited, while the voting at such election is going on, or before the ballots shall all have been duly taken out of such ballot-box by the judges of such election, according to law, or if any person or persons shall unlawfully attempt to destroy any ballot-box used, any ballot or vote deposited, any poll-book kept at any election, held by virtue of any law of this territory, such person or persons shall, upon conviction thereof, be imprisoned in the territorial prison, and kept at hard labor, for a term not less than one, nor more than three years, at the discretion of the court.

Destruction
of ballot-
box, etc.

SEC. 3. If any person or persons shall, unlawfully, destroy any ballot-box used, any ballot or vote deposited, any poll-book kept at any election held by virtue of any law of this territory, such person or persons shall be guilty of a misdemeanor,

and shall, upon conviction thereof, be imprisoned in the territorial prison of the territory of Nevada, and kept at hard labor, for a term not less than two years, nor more than five years, at the discretion of the court. Punishment.

SEC. 4. Any judge or judges of any election who shall receive the vote of any person, when such person has a distinct and visible admixture of African blood, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, nor less than one hundred-dollars, and imprisoned in the territorial prison, not more than two years, nor less than six months. Election judges to reject certain votes.
Punishment.

SEC. 5. That all prosecutions under the provisions of this act, shall be by indictment of a grand jury, before the court of competent jurisdiction in the county where the offense has been committed, and shall be governed by the same rules as in the trial of other offenses, the punishment of which is imprisonment in the penitentiary. Prosecutions to be by indictment.

SEC. 6. Any person guilty of stuffing any ballot-box, either by false bottoms, or in any manner whatever, before the votes are counted, or while counting, so as to, in any manner, change the result, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the territorial prison, for a term not more than ten years, nor less than five years, at the discretion of the court. Ballot-box stuffing.
Punishment.

CHAP. XLIX.—*An Act concerning Roads and Highways.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. All roads shall be considered as public highways, which are or have been used as such, at any time within two years prior to the passage of this act, or which may hereafter be declared as such by the board of county commissioners, within their respective counties; *provided*, that nothing in this section shall be so construed as to in any way interfere with toll roads not laid out upon such public highway; and *provided*, further, that in case any such public highway is now closed, the same shall not be opened without an order of the board of county commissioners. Public highways.

SEC. 2. It shall be the duty of the board of commissioners of each county, to divide the county into a suitable number of road districts, and there shall be elected at each election, a road supervisor for each district. Road distr's, supervisors.

County clerk
to notify
supervisors
of election.

SEC. 3. The county clerk of each county, shall notify all persons who have been elected road supervisors, within ten days after such election has been made [held], informing them of such election, and describing the boundaries of their district.

Duties of
supervisors.

SEC. 4. The road supervisors shall cause all the public highways within their respective districts, to be kept clear from obstructions, and in good repair, causing banks to be graded, bridges and causeways to be made, when the same may be necessary to keep the same in good repair, and to mend them when destroyed.

Damages to
land owners.

SEC. 5. The road supervisors shall have power to make use of any gravel or dirt for improving the roads, which may be absolutely necessary, from any adjacent improved lands, and the board of commissioners may allow such damages, if there be any, to the owners of said lands, as they may deem just; *provided*, that said commissioners shall be liable to pay damages to the county, at the suit of any citizen, if it shall be proved that they have allowed extraordinary and extravagant damages.

Road tax,
supervisor
to collect.

SEC. 6. There shall be levied and collected on all able-bodied men in each district, a road tax of four dollars, to be collected by the road supervisor, and the auditor of the county shall furnish him blank receipts for the same, and charge him therewith, and the road supervisor shall spend the money collected by him, in the improvement of public highways, and shall take receipts for all moneys expended by him, and settle with the auditor quarterly, and make a full exhibit of the expenditures made by him; *provided*, if any person liable to pay road tax, as herein provided, will perform, or cause to be performed, two days' work, it shall be full satisfaction for said four dollars.

Contracts
for road
improvements.

SEC. 7. Whenever any contract for the improvement of roads is to be made, advertisement thereof shall be given by the supervisor of the district in which such improvement is to be made, by posting written notices in two of the most public places of his district, and by advertisement in one newspaper of the county, or if none be published in the county, by notice posted on the court-house door, ten days prior to the letting of such contract, and all contracts shall be awarded to the lowest responsible bidder, subject to the approval of the board of commissioners; *provided*, that the supervisors shall have power to make contracts for the improvement of roads, which shall not exceed the sum of fifty dollars, at their option, such contract to be approved by the board of commissioners.

County
commiss'rs
to approve
contracts.

Laying out
new roads.

SEC. 8. The board of commissioners of each county, on presentation of petitions praying for a county road to be laid out within the county, or praying for a cart road to be laid out from the dwelling or plantation of any person to any public road, or from one public road to another, and designating the points therein, shall cause notice to be given to the parties owning the lands over which such road is to be located; and if

objections, by one or more of the owners, shall be made, the board of commissioners shall consider and determine the same, at their next regular meeting, and if they shall be of the opinion that such road is necessary, they shall appoint two persons, as viewers, to view out and locate said road, and upon a return of the certificate of the viewers, shall declare the same to be a public highway. When absolutely necessary, the county surveyor may be called in by the commissioners to assist in said location.

County
surveyor
to assist in.

SEC. 9. Each road supervisor shall report to the board of commissioners, quarterly, the amount of money collected and paid out by him, and to whom, and for what paid, the number of days he has been in actual service, and also a list of delinquents; and said supervisor shall make an affidavit before a justice of the peace, or some other officer qualified to administer oaths, that the said report and delinquent list are correct, to the best of his knowledge and belief; and any person refusing or neglecting to pay the road tax, required by this act, to the supervisor, within three days after the said tax shall have been demanded, in writing, of him, by such supervisor, shall be considered a delinquent, and the supervisor shall proceed to levy, and sell at public vendue, to the highest bidder, after giving public notice, as required by law on sales under execution, the property of such delinquent, or so much thereof as shall be necessary to satisfy such delinquent's road tax, and costs of making such sale.

Supervisor's
report.

Delinquents.

SEC. 10. The road supervisors shall each receive for their services, while in actual employment, such compensation as shall be allowed by the board of commissioners, not to exceed six dollars per day.

Compensat'n
of superv'rs.

SEC. 11. If any person shall obstruct any public road, by falling any tree across the same, or by placing any other obstruction therein, or damaging, digging, or deepening a creek or river, or its banks, so as to destroy a ford or crossing, he shall be liable to prosecution before any justice of the peace, by any commissioner of the county, or supervisor of the road district, on behalf of the county, and, on conviction thereof, shall be fined in a sum not exceeding fifty dollars, and shall forfeit five dollars for every day he shall suffer said obstruction to remain, after he shall have been ordered to remove the same by the supervisors. The road supervisors shall cause to be erected, and kept in repair, posts and guide-boards, with inscriptions thereon, in letters and figures, giving the direction and distance to the most noted places to which such roadway leads.

Obstructions

Punishment.

Posts and
guide-boards.

SEC. 12. If any person shall willfully destroy, or injure, any bridge or causeway, or remove, or cause to be removed, any of the plank or timber therefrom, or cut down, or injure, any tree planted or growing as a shade tree in any public highway, or damage any highway by digging in it, he shall be

Injuring
bridges, etc.

Punishment. liable to be prosecuted, before any justice of the peace, by any commissioner of the county, in behalf of said county, and, on conviction thereof, shall be fined in a sum not to exceed one hundred dollars.

Fines. SEC. 13. All fines collected under the provisions of this act, shall be paid into the county treasury, for the use of the road district in which the same was collected.

SEC. 14. This act shall take effect from and after its passage.

CHAP. L.—*An Act to provide for the Assessing and Collecting County and Territorial Revenue.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Territorial tax. SECTION 1. An annual *ad valorem* tax of forty cents upon each one hundred dollars value of taxable property, for territorial purposes, upon the assessed value of all property in this territory, not by this act exempted from taxation; and upon the same property, the board of commissioners of each county is also hereby authorized and empowered to levy and collect, County tax. annually, a tax for county expenditures, not exceeding sixty cents on each one hundred dollars; and upon the same property, the board of commissioners of each county is also hereby authorized and empowered to levy and collect, annually, such additional and special taxes, as the laws of this territory may authorize, or require them to levy or collect; *provided*, however, that, whenever the board of commissioners levy any tax, they shall cause such levy to be entered on the record of their proceedings, and shall direct their clerk to deliver a certified copy thereof, to the assessor, tax-collector, auditor, and treasurer, each of whom shall file said copy in his office. Levy to be recorded.

County commiss'rs to assess. SEC. 2. The board of commissioners of each county shall, prior to the first Monday of March, unless otherwise provided by special act, annually assess the amount of taxes that shall be levied for county purposes, designating the number of cents which shall, on each one hundred dollars of taxable property, real, or personal, be levied for each purpose; and shall add thereto the amount levied by law on each one hundred dollars of taxable property, real or personal, for either territorial or county purposes. Funds receivable for taxes. All taxes levied under the provisions of this act, shall be paid in the legal coin of the United States, or in foreign coin, at the value fixed for such coin by the laws of the United States; *provided*, however, that county taxes, levied in accordance with the provisions of any special act, may be

collected in such funds as in such special act may be provided. The board of commissioners of the respective counties shall, prior to the first Monday in March, of each year, cause to be prepared, suitable and well-bound books for the use of the assessor, in which he shall enter his tax list, or assessment rolls, as hereinafter provided; said books shall contain suitable printed heads, and be ruled to conform with the form of the assessment roll, as provided in this act.

SEC. 3. Every tax levied under the provisions or authority of this act, is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March, in each year, and shall not be satisfied or removed, until the taxes are all paid, or the property has absolutely vested in a purchaser under a sale for taxes.

SEC. 4. All property, of every kind and nature whatsoever, within this territory, shall be subject to taxation, except—
 First. All land and lots of ground, with buildings, improvements, and structures thereon, belonging to the territory, or any municipal corporation, or to any county of the territory; and all lands belonging to the United States, or to this territory; and all buildings and improvements belonging to the United States, or to this territory. Second. Court-houses, jails, town-halls, council-chambers, houses occupied by fire-companies and their apparatus, and other public structures and edifices; and all squares and lots kept open for health, or public use, or for ornament, belonging to any county, city, town or village, in this territory; public libraries, colleges, school-houses, and other buildings for the purpose of education, with their furniture, libraries, and all other equipments, and the lots, or lands thereto appurtenant, and used therewith, so long as the same shall be used for that purpose; *provided*, that when any of the property mentioned in this subdivision is private property, from which a rent, or other valuable consideration, is received for its use, the same shall be taxed as other property. Third. Public hospitals, asylums, poor-houses, and other charitable or benevolent institutions, for the relief of the indigent or afflicted, and the lots or lands thereto appurtenant, with all their furniture and equipments; all grounds and buildings belonging to agricultural societies, so long as the same shall be used for that purpose only, and without pecuniary gain. Fourth. Churches, chapels, and other buildings for religious worship, with their furniture and equipments, and the lots of ground appurtenant thereto and used therewith; *provided*, rent is not paid for such ground, so long as the same shall be used for such purposes only, without yielding rent. Fifth. The buildings and lots of ground appurtenant thereto, and used therewith, owned and used by the order of Free and Accepted Masons, the Independent Order of Odd Fellows, or by any benevolent or charitable society, except such buildings and lots of ground as are owned in connection with individual owners, then only to the extent

owned by such orders or societies. Sixth. Cemeteries and graveyards, set apart and used for the purposes of interring the dead. Seventh. The property of widows, or orphan children, not to exceed the amount of one thousand dollars to any one family. Eighth. Growing crops. Ninth. Mining claims; *provided*, that all machinery used in mining claims, and all property and improvements appurtenant to, or upon, mining claims, which have an independent and separate value, shall be subject to taxation. Tenth. No property, belonging to any person who has arrived across the plains, for the first time, after the first day of July in any year, shall be assessed in the same year, unless such property exceed one thousand dollars in value, and in case it does exceed such sum, then only the excess above that sum shall be assessed to such person.

Widows and orphans.
Growing crops.
Mining claims, etc.
Property of immigrants.

Real estate defined.

Personal property defined.

SEC. 5. The term "real estate," whenever used in this act, shall be deemed and taken to mean and include, and it is hereby declared to mean and include, the ownership of, or claim to, or possession of, or right of possession to, any land within the territory, and the claim by, or possession of, any person, firm, corporation, association, or company, to any land, shall be listed under the head of real estate; the term "personal property," whenever used in this act, shall be deemed and taken to mean, and it is hereby declared to mean and include, all household and kitchen furniture, all law, medical, and miscellaneous libraries, all goods, wares, and merchandise, all chattels, of every kind and description, all money on hand, or on deposit in bank, or banks, or with individuals, all moneys at interest, secured by mortgage, or otherwise, gold dust, silver bars, bullion, solvent debts, other than those mentioned in this section, when the amount thereof exceeds the indebtedness of the party assessed; stocks of goods on hand; horses, mules, oxen, cows, calves, beef-cattle, hogs, sheep, goats, jacks, and jennets, and cattle of every description; wagons, carriages, buggies, omnibuses, stages, stage-coaches, sulkies, carts, drays, and all other vehicles, whether for use or pleasure, or hire; all machines, and machinery; all works and improvements; all store-ships, and hulks; all steamers, vessels, and water craft, of every kind and name, either owned in whole, or in part, by a resident of the territory, or navigating the waters of any river, or lake, within the territory, and having a general depot, or terminus, within the territory; all capital loaned, invested, or employed, in any trade, commerce, or business whatsoever; the capital stock of all corporations, companies, associations, firms, or individuals, doing business, or having an office in the territory, the money, property, and effects, of every kind, except real estate, of all banks, banking institutions or firms, bankers, money-lenders, and brokers; all houses, buildings, fences, ditches, structures, erections, or other improvements, built or erected upon any land, whether such land be private property, or the property of the territory, or of the United States, or any

municipal corporation, or county, in the territory; and all property, of whatsoever kind, or nature, not included in the term "real estate," as said term is defined in this act.

ASSESSORS AND THEIR DUTIES.

SEC. 6. At the next election held in the counties of this territory, for county officers, and at such election every two years thereafter, there shall be elected by the qualified electors of each county a county assessor. Election of.

SEC. 7. Each county assessor, before entering upon the duties of his office, shall execute, to the people of the United States, in the territory of Nevada, a bond, in the penal sum of five thousand dollars, with two or more sufficient sureties, to be approved by the probate judge, conditioned for the faithful performance of all the duties of his office required by law, and shall take the oath of office, as prescribed by law, which shall be indorsed on his certificate of election or appointment. Bond and oath of office

SEC. 8. In case of a vacancy in the office of county assessor, or failure of any county assessor to qualify, as required in this act, the board of commissioners shall appoint some suitable person, possessing the qualifications of an elector, residing within such county, to fill the vacancy; and the person thus appointed shall give bond, take the like oath that is required of assessors elected by the people, and shall hold his office until the next general election, and until his successor is chosen and qualified. Vacancies, county commiss'rs to fill.

SEC. 9. Said assessor shall have the power of appointing one or more deputies, to aid in his official duties, for whose conduct he shall be responsible; *provided*, that the assessor, before he shall appoint a deputy, or deputies, shall divide the county into convenient districts, of which division notice shall be given to the board of commissioners of said county, and no person shall be appointed a deputy to assess any district, unless he shall be a resident of said district; and *provided*, further, that the board of commissioners may fix the number of days for which pay shall be allowed any deputy for assessing a district. Deputies. Pay of.

SEC. 10. If any assessor, or deputy assessor, shall be guilty of neglect of any of the duties enjoined on him by law, he shall be liable to indictment in any court of competent jurisdiction, and fined in any sum not exceeding five hundred dollars. Punishment for neglect of duties.

SEC. 11. Suit may be instituted on the assessor's bond, in the manner prescribed by law, for the benefit of any person who may be aggrieved by the wrongful act, or conduct, of such assessor, or his deputy. Suit on bond

SEC. 12. The assessor, and his deputies, are hereby authorized to administer all oaths and affirmations contemplated by law, in the discharge of their duties as such assessors. To administer oaths.

SEC. 13. Between the first Monday in March and the first

Assessment
of property.

Powers of.

Unknown
owners.

Property in
other coun-
ties.

Monday in August, in each year, the county assessor, except otherwise required by special enactment, shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also the names of all persons, corporations, associations, companies or firms, owning, claiming, or having, the possession or control thereof, and he shall then determine the full cash value of all such property, and shall list and assess the same to the person, firm, corporation, association, or company owning or having the possession, charge, or control thereof. For the purpose of enabling the assessor to make such assessment, he shall demand from each person and firm, and from the president, cashier, treasurer, or managing agent, of each corporation, association, or company, within his county, a statement, under oath, or affirmation, of all the real estate or personal property within the county, owned, claimed by, or in the possession or control of, such person, firm, corporation, association, or company. If any person, officer, or agent, shall neglect or refuse, on demand of the assessor, or his deputy, to give, under oath or affirmation, the statement required by this section, the assessor shall make an estimate of the value of the taxable property which such person, officer, or agent, neglected or refused to render, under oath or affirmation, and the value so fixed by the assessor shall not be reduced by the board of equalization. If the owner of any property, not listed by another person, shall be absent, or unknown, the assessor shall make an estimate of the value of such property. If the name of such absent owner is known to the assessor, the property shall be assessed in his, her, or their name; if unknown to the assessor, the property shall be assessed to "unknown owners."

SEC. 14. At the same time, and in the same manner, as the other lists of property herein required are given, each and every person shall deliver, under oath, or affirmation, to the assessor, a similar list of all the real estate, with the improvements thereon, if any, and other personal property, which he, and the firm of which he is a member, and the corporation, association, or company, of which he is president, cashier, treasurer, secretary, trustee, or managing agent, owns, claims, or has charge, possession, or control of, in any other county of the territory, which he does not, of his personal knowledge, know has been assessed in such other county for that year, which list shall particularly describe each tract of land, and each city or town lot contained therein, so that the same may be found and known by such description, and all vessels, steamers, and other water craft, and shall also specify each and all deposits, if any, and persons with whom such deposit or deposits are made, and the place, or places, in which the same may be found, unless he shall have included all such money, gold dust, silver, bars, and bullions, in the list of property in his county which it shall be lawful to do; and shall also specify

the kind and nature of all other personal property in such county, belonging to, or under the charge, control, or in the possession of him or them.

SEC. 15. Every assessor, as soon as he shall have received a list of any property in another county, under the foregoing section, shall make out, from the lists delivered to him, a list for each county in which any taxable property may be, and shall transmit the same, by mail, or express, to the assessor of the proper county, who shall assess the same as other taxable property therein, if it has not been before assessed for the same year. List of, to be transmitted.

SEC. 16. The owner, or holder of any stock in any firm, incorporated company, or association, the entire capital of which is invested in property which is assessed, or the capital of which is assessed, shall not be assessed individually for his stock in such company, or association; nor shall any person having an interest in any partnership or firm [be individually assessed for the partnership or firm] property, if such property is assessed to the partnership or firm. The property of every firm, incorporated company, or association, shall be taxed in the county where the property is situated; *provided*, that whenever any portion of the property of any such company, shall be assessed and taxed in the county wherein the same is located, then, upon presentation at the principal office of such company, of the certificate or receipt of the tax-collector of said county, that such taxes have been paid in another county, the same shall be deducted at the principal office from the aggregate amount of taxes imposed upon, or paid by, said company, for the same property in the county wherein the principal office of the said company is situated. The undivided property of deceased persons may be listed to the heirs, guardians, executors, or administrators, as the case may be, and a payment of taxes made by either shall bind all the parties in the interest for their equal proportions. It is hereby made the duty of every probate judge, from time to time, to direct each and every administrator and executor (which direction may be specially given in each case, or by general order), to pay out of the funds of the estate all taxes that have attached, or accrued, against such estate, after the passage of this act, and no order, or decree, for the distribution of any property of any decedent among the heirs, or devisees, shall be made until all taxes which have been attached to, or accrued against, the estate, shall have been paid. Incorporated companies.
Taxes paid in another county.
Estates of deceased persons.
Probate judge, duty of.

SEC. 17. If any person shall willfully make, or give, under oath, or affirmation, a false list of his, her, or their, taxable property, or a false list of taxable property under his, her, or their control, such person shall be deemed guilty of perjury, and, upon conviction thereof, shall be punished therefor, as is by law provided for the punishment of perjury. False list on oath.
Punishment.

SEC. 18. If any person shall give the assessor, or his dep-

False name, or refusal to give list.	uty, a false name, or shall refuse to give his or her name, or shall refuse to give a list of property, as is by this act required, or shall refuse to swear, or affirm, to such list, he or she shall be guilty of misdemeanor, and shall be arrested upon complaint of the assessor, or his deputy, and, upon conviction before a justice of the peace, he, or she, shall be punished by a fine of not less than ten dollars, nor more than five hundred dollars,
Punishment.	or by imprisonment for a term of not less than two days, nor more than three months, or by both such fine and imprisonment.
Liability of, for neglect.	SEC. 19. The assessor and his sureties shall be, and they are hereby, made liable for the taxes on all taxable property within the county, which is not assessed through his neglect; and if any non-assessment was caused by the refusal of the owner, agent, or claimant, of such property, or of the person, or persons, having it in possession, or under his, or their, control, or charge, to give a list of it to the assessor, the assessor shall not be liable, but the person, or persons, whose refusal to give the assessor a list caused the omission, shall pay double the taxes imposed upon property regularly taxed.
Assessment roll.	SEC. 20. It shall be the duty of the assessor to prepare a tax list, or assessment roll, alphabetically arranged in the book or books furnished him by the board of commissioners for that purpose, in which book, or books, shall be listed, or assessed, all the real estate, improvements on real estate, improvements on public lands, and other personal property, within the limits of the county; and in said book, or books, he shall set down in separate columns:—First. The names of the taxable inhabitants, firms, incorporated companies, or associations, in alphabetical order, if known; if unknown, the property shall be assessed to “unknown owners;” and if any person shall refuse to make a statement of his property, under oath, as required by this act, that fact shall be noted under his name. Second.
Names.	All real estate and improvements taxable to each inhabitant, firm, incorporated company, or association, described by metes and bounds, or by common designation, or name; if situate within the limits of any city, or incorporated town, described by lots, or fractions of lots; if without said limits, giving the number of acres, as nearly as can be conveniently ascertained, and the location and township where situate; all improvements on public lands, describing, as nearly as possible, the location of such improvements; <i>provided</i> , that when two, or more parties claim, or give a description of the same land, it shall be assessed to each party making such claim, or giving such description, according to the estimated value of the claims of each.
List of property.	Third. The cash value of real estate, and the improvements thereon. Fourth. The cash value of all improvements on real estate, where the same is assessed to a person other than the owner of said real estate. Fifth. The cash value of all personal property, except improvements on real estate, or public
Proviso.	
Real estate.	
Improvem'ts	
Personal property.	

Poll-tax.

Assessment of Property for the Fiscal Year ending March ———, to all Owners and Claimants known and unknown.

Form of
assessment
roll.

**Lots and
blocks.**

SEC. 21. On, or before, the first Monday in August, in

Duty of clerk
of county
commiss'rs.

each year, the assessor shall complete his tax list, or assessment roll, and shall attach his certificate thereto, and deliver it, and the map book, and all of the original lists of property given to him, to the clerk of the board of commissioners, and as soon as he receives said assessment roll, the clerk of the board of commissioners shall give notice of the fact, specifying therein the time of meeting of the board of equalization, by publication in one newspaper, if there be one published in the county, and if none, then in such manner as the board of commissioners shall direct; and he shall keep the roll open, in his office, for public inspection.

Supplement-
ary assess-
ments.

SEC. 22. It shall be lawful for the assessor, at any time subsequent to the first Monday in August, and prior to the last Saturday in October, in each year, to assess any property which shall not be on the regular list; and he shall enter such assessment in a separate portion of the tax list, or assessment roll, under the head of "subsequent assessments," and shall deliver a true copy of the original assessment to the county auditor, to be by him compared with the entries on the assessment roll, and the same shall then be filed with the clerk of the board of commissioners.

BOARD OF EQUALIZATION.

What to
constitute.

SEC. 23. The commissioners of the county shall constitute a board of equalization, of which board the clerk of the board of commissioners shall be clerk. The board of equalization shall meet on the second Monday in August, and shall continue in session, from time to time, until the business of equalization presented to them is disposed of; *provided*, however, that they shall not sit after the first Monday in September, except as in this section provided. The board of equalization shall have power to determine all complaints made in regard to the assessed value of any property, and may change and correct any valuation, either by adding thereto, or deducting therefrom, if they deem the sum fixed in the assessment roll too small, or too great, whether said sum was fixed by the owner, or the assessor; except that in cases where the person complaining of the assessment, has refused to give the assessor his list, under oath, as required by this act, no reduction shall be made by the board of equalization in the assessment made by the assessor; and if the board of equalization shall find it necessary to add to the assessed valuation of any property on the assessment roll, they shall direct their clerk to give notice to the persons interested, by letter deposited in the post-office, or express, or otherwise, naming the day when they shall act in that case, and allowing a reasonable time to appear. As soon as possible after the adjournment of the board of equalization in September, its clerk shall make out a list of all persons, the valuation of whose property has been added to, with the amounts so added on the assessment roll, who have not appeared before the board,

May correct
valuation.

Duty of
clerk.

and a list of all property, the valuation of which has been added to on the assessment roll, with the amounts so added, the owners of which have not appeared before the board, and the board of commissioners shall cause the same to be published in one newspaper in the county, if there be any, and if not, then by posting one copy of the same in a public and conspicuous place in each township in the county: and any person, to the assessed value of whose property there was an amount added, not appearing before the board of equalization in September, may appear before the board in November, and upon making affidavit that he had no knowledge of such increased valuation of his property, he shall have a hearing before the board of equalization, and the determination then had shall be final: and the clerk of the board of equalization shall note all changes made, and report the same to the auditor, who shall make the changes required on the original assessment roll, and the auditor shall, in the next regular statement to the auditor of the territory, report such changes in such statement. During the session of the board of equalization, the assessor shall be present, and also any deputy whose testimony may be required by the parties appealing to the board, and they shall have the right to make any statement touching such assessment, and producing evidence relating to questions before the board. And the recorder of the county shall also be present, and attend on the board of equalization, with an abstract of all unsatisfied mortgages and liens remaining on record in his office, arranged in alphabetical order, for which service he shall receive no compensation, except as provided in section fifty-two of this act, and the board of equalization shall make use of such abstract, and of all other information that they can gain from the records in the recorder's office, or otherwise, in equalizing the assessment roll of the county, and may require the assessor to enter upon such assessment roll any such mortgage, or liens, or other property, which has not been assessed; and the assessment and equalization so made, shall have the same force and effect as if made by the assessor, before the delivery of the assessment roll, by him, to the clerk of the board of equalization. A quorum of the board of commissioners shall be sufficient to constitute the board of equalization, and a majority of the members present shall determine the action of the board. On the first Monday in November, the board of commissioners shall meet as a board of equalization, to equalize the subsequent assessment roll, and hear complaints, as provided for in sections twenty-two and twenty-three of this act.

SEC. 24. During the session, or as soon as possible after the adjournment of the board of equalization, its clerk shall enter upon the assessment roll all the changes and corrections made by the board, and thereupon deliver the assessment roll, so corrected, to the county auditor, whose duty it shall be to add up the columns of valuation, and enter the total valuation of

To publish
report.

Persons
aggrieved.

Assessor to
be present
at meeting
of board.

Duty of
recorder.

Quorum of.

Duty of
clerk.

each description of property on the roll ; and, on or before the third Monday in September, as to the original assessment roll, and on or before the second Monday in November, as to the subsequent assessment roll, he shall deliver a true copy of the corrected roll, to be styled a "Duplicate Assessment Roll," with territorial, county, and other taxes, and totals of taxes, to each person, carried out in separate money columns, with his certificate thereto attached, and also the map or plat book, to the tax collector.

Duplicate as-
essment roll

TAX COLLECTOR, AND HIS DUTIES.

Election of. SEC. 25. At the next election, held in the counties of this territory, for county officers, and, at such election every two years thereafter, there shall be elected, by the qualified electors of each county, a county tax collector.

Bond. SEC. 26. The county tax collector, before entering upon the duties of his office, shall execute to the people of the United States in the territory of Nevada, a bond, in the penal sum of twenty thousand dollars, or in a greater sum, if the board of commissioners of the county require it, with two or more sufficient sureties, to be approved by the probate judge, conditioned for the faithful performance of all the duties of his office, as required by law, and shall take the oath of office, as prescribed by law, which shall be indorsed on his certificate of election, or appointment; *provided*, that no bond shall be required in a greater sum than twice the amount of taxes to be collected.

Vacancy. SEC. 27. In case of a vacancy occurring in the office of county tax collector, or failure of any county tax collector to qualify, as required in this act, the board of commissioners shall appoint some suitable person, possessing the qualifications of an elector, and residing within said county, to fill the vacancy; and the person thus appointed, shall give the same bond, and take the like oath, that is required of tax collectors elected by the people, and shall hold office until the next general election, and until his successor is elected and qualified.

Deputies. SEC. 28. The tax collector shall have the power of appointing one or more deputies, to aid in his official duties, for whose conduct he shall be responsible.

Neglect of duties. SEC. 29. If any tax collector, or his deputy, shall willfully neglect, or refuse, to perform any of the duties enjoined on him by the provisions of this act, he shall be guilty of a misdemeanor in office, and, on conviction thereof, shall be punished by imprisonment in the county jail, not more than one year, or by a fine of not less than two hundred, nor more than one thousand dollars, or by both such fine and imprisonment, and shall be forthwith removed from office.

Punishment.

**To accom-
pany asses's'r.** SEC. 30. The tax collector is hereby authorized and required (unless otherwise directed by the board of commissioners in the respective counties), either in person, or by

deputy, to accompany the assessor and his deputies through the county; *provided*, that in the counties in which the board of commissioners directs a tax collector not to accompany the assessor, the tax collector shall deputize the assessor to collect poll-taxes until such time as the assessment is completed, and upon the entry of any assessment of movable personal property to any person, firm, corporation, association, or company, who does not own real estate within the county, to demand the payment of the taxes on the same; and, if any such person, firm, corporation, association, or company, shall neglect, or refuse, to pay such taxes, the tax collector, or his deputy, shall seize sufficient of the personal property of the party so neglecting, or refusing to pay, to satisfy the taxes and costs, and shall post a notice of such seizure, with a description of the property, and the time and place where it will be sold, in three public places in the township where it is seized, and shall, at the expiration of five days, proceed to sell, at public auction, at the time and place mentioned, to the highest bidder for cash, a sufficient quantity of said property to pay the taxes and expenses incurred; and, for this service, the tax collector shall be allowed, from the delinquent party, a fee of three dollars, and the same mileage that a sheriff would be entitled to receive for traveling to the place to make a levy; and, upon the payment of the purchase money, he shall deliver to the purchaser, the property sold, together with a certificate of the sale, and of the amount of taxes or assessments, and expenses thereon, for which the property was sold, whereupon, the title to the property so sold, shall vest absolutely in the purchaser; *provided*, that in counties where the tax collector is compensated for his services by a specific salary, he may appoint the deputies required by this section, and be paid for his services for collecting revenue under this section, for his own use, as in this act provided.

Duties of.

Proviso.

SEC. 31. The tax collector shall, on the first Monday of each month, return to the auditor a list of all collections made under the preceding section, and it shall be the duty of the auditor to mark the word "paid" on the original or subsequent assessment roll, opposite the name of each party whose taxes are so paid, as soon as the same shall have been delivered to him.

Monthly returns.

SEC. 32. Upon receiving the duplicate assessment roll from the auditor, the tax collector shall proceed to collect the taxes, and shall, forthwith, give notice by publication in one newspaper, if there be any published in his county, and if none be published, then by posting notices in three public and conspicuous places in the county, that the territorial and county taxes are due and payable, and that the laws in regard to their collection will be strictly enforced.

Publication of notice.

SEC. 33. Whenever any tax is paid to the tax collector, he shall mark the word "paid" and the date of payment, in the

Receipt of taxes.

duplicate assessment roll, opposite the name of the person on, or description of the property, liable for such taxes, and shall give a receipt therefor, specifying the amount of the assessment, the amount of the tax, and a description of the property assessed; but no tax collector shall receive any taxes on real estate, for any portion less than the least subdivision entered on the assessment roll; *provided*, always, that an owner of undivided real estate may pay the proportion of taxes due on his interest therein.

To verify
annual
statement.

Delinquent
list.

SEC. 34. On the third Monday of November, in each year, the tax collector shall, at the close of his official business on that day, enter upon the duplicate assessment roll a statement, that he has made a levy upon all the property therein assessed, the taxes upon which had not been paid, and shall immediately ascertain the total amount of taxes then delinquent, and file in the office of the auditor, a statement of said amount, verified by the oath of himself, or deputy, and shall proceed to make out and file in the office of the auditor, a list of all persons and property then owing any taxes, verified by the oath of himself, or deputy, which list shall be completed by the first Monday in December, and shall be known as the delinquent list; and to enable the tax collector to make out said list, no taxes shall be received by him on the duplicate assessment roll, after making the entry provided for in this section; *provided*, that in the counties where the tax collector receives a salary, he shall be allowed for his own use, the amount provided by law for making said delinquent list.

Payments to
county
treasurer.

Assessment
roll to be
compared.

SEC. 35. The tax collector shall, on the first Monday in each month, pay to the county treasurer all money in his hands, belonging to, or collected for the use of, the territory, or county; and shall, on the same day, present to the auditor the treasurer's receipt for said money, and shall, at the time, deliver to the auditor, under oath, a true and correct account of all his transactions and receipts, since his last settlement as collector of territorial and county taxes; and shall also state, under oath, or affirmation, that all the money collected by him as tax collector, has been paid, which account and statement shall be filed in the office of the auditor. On the first Monday in December, in each year, the tax collector shall attend at the office of the county auditor, with his duplicate assessment roll, and the auditor and tax collector shall then carefully compare the said duplicate assessment roll with the original, marking on the original roll, the word "paid," opposite the name of each person whose taxes have been paid, or opposite the description of the property upon which taxes have been paid; and the auditor shall then and there administer to the tax collector an oath, which shall be written and subscribed on the original and duplicate assessment roll, to the effect that each person, and all property assessed in said roll, on which taxes have been paid, has the word "paid" marked

opposite the name of such person, or the description of such property; and the auditor shall then foot up the amount of taxes remaining unpaid, and credit the tax collector with the amount, and shall make a final settlement with the tax collector, of all taxes charged against him on account of said assessment roll. Within ten days after such final settlement, the auditor shall transmit, by mail, to the auditor of the territory, a statement in such form as the territorial auditor may require, of all, and of each particular kind, of property assessed, and a statement of all, and of each particular kind, of property delinquent, and of the total amount of delinquent taxes. For the services required by this section, the tax collector shall receive no fee or compensation whatever.

To transmit
statement to
territorial
auditor.

SEC. 36. If any tax collector shall refuse, for a period of five days, or willfully neglect to make the payments and settlements with the treasurer and auditor of his county, as in this act specified, he and his sureties shall be held liable to pay the full amount of taxes charged upon the assessment roll; and the district attorney, of his own volition, or on being instructed to do so by the territorial auditor, or by the probate court, or board of commissioners of the county, shall cause suit to be brought against such tax collector and his sureties, for the full amount due on the auditor's books; and if any such suit is commenced, no credit or allowance whatever shall be made to such refusing, or neglecting tax collector, for the delinquent taxes outstanding.

Penalty for
neglect of
duty.

SEC. 37. At any time after the third Monday of November, and before the institution of suit, as herein provided, any delinquent tax payer may, upon a certificate from the auditor (giving a description of the property and the taxes due thereon), pay to the county treasurer the taxes assessed against said delinquent, with five per cent. additional thereon, taking from the treasurer duplicate receipts for the amount paid, one of which receipts shall be filed with the county auditor, the other with the district attorney of the county. After having been served by any person, with a duplicate receipt of the county treasurer, for the total amount of taxes due from such person, or upon a piece of property, with five per cent. thereon additional, the district attorney shall not commence the suit authorized by this act against such person or property; *provided*, that if any person shall fail to serve said receipts, such person shall pay all costs that may result from his or her negligence. The additional five per cent. provided for by this section, shall be paid into the county treasury, for the use of the county.

Delinquents
may pay to
county
treasurer.

SEC. 38. The auditor shall, within three days after receiving such delinquent list, deliver the same to the district attorney of his county, duly certified by him; and shall, at the same time, publish a notice in some newspaper, printed in said county, if there be any, and if not, then by posting notices in three public

Duties of
county
auditor.

places in said county, that said delinquent list has been so deposited with the district attorney, and that, unless the delinquent taxes therein specified, are paid to the county treasurer, within twenty days from the publication or posting of such notice, action will be commenced by said attorney for the collection of such taxes and costs. Said auditor shall make, or procure, and file with the district attorney immediately, an affidavit, stating the contents of said notice, and the manner and time of such publication, or posting, as required in this section. The district attorney, before receiving the delinquent list, as provided in this section, shall enter into such additional bond as may be required by the board of commissioners.

District
attorneys,
additional
bond of.

SEC. 39. The district attorney of the several districts of this territory, are hereby authorized and directed, immediately after the expiration of the time specified in section thirty-eight of this act, to commence actions in the name of the people of the United States and Nevada Territory, against the person so delinquent, and against the real estate and improvements assessed so delinquent; and against all owners or claimants to the same known, or unknown, such action may be commenced in the county where such assessment is made, before any justice of the peace, or court, in said county, having jurisdiction thereof: and such jurisdiction shall be determined solely by the amount of delinquent tax sued for, not regarding the location of the land as to the township, nor the residence of the person, as to town, township, county or territory.

Duties of
district
attorneys.

SEC. 40. The complaint in said action may be as follows:

Form of
complaint.

TERRITORY OF NEVADA,

County of

The People of the United States and Ter-
ritory of Nevada,

v.

A B & Co. and the real estate and im-
provements in—[describing them.]

[Title of the court.]

The people of the United States, and territory of Nevada, by X Y, district attorney of the district of ———, complain of A B, ———, and also the following real estate, and improvements, [describing them with the same particularity as in actions of ejectment, or actions for the recovery of personal property,] and, for cause of action, say:

That, between the first Monday in March and the first Monday of ———, A. D. 18—, in the county of ———, in the territory of Nevada, O P, then and there being county assessor of said county, did duly assess and put down upon an assessment roll all the property, real and personal, in said county, subject to taxation; and that said assessment roll was afterwards submitted to the board of equalization of said county, and was by said board duly equalized, as provided by law; that said A B was then and there owner of, and that there

was duly assessed to him, the above described real estate, improvements upon real estate, and certain personal property; and that upon such property there has been duly levied, for the fiscal year A. D. 18—, a territorial tax of — dollars, and a county tax of — dollars, amounting in the whole to — dollars, all of which is due and unpaid, of which amount, — dollars was duly assessed and levied against the real estate, and — dollars against the improvements aforesaid.

Wherefore, said plaintiffs pray judgment against A B, for the sum of — dollars (the whole of said tax), and separate judgment against said real estate and improvements, for the sum of — dollars (the tax thereon), and for such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes, and of this action.

X Y, District Attorney,
District of —.

Provided, that if the property be assessed to an unknown owner, then any fictitious name may be inserted to represent such owner as defendant. Proviso.

SEC. 41. Upon filing the complaint in a district court, or before a justice of the peace, a summons shall be issued, as is provided in civil cases, and shall be served by delivering a copy thereof to each defendant named; and as to said real estate, or improvements, by delivering a copy thereof to the person, or persons, in possession of the same; and, further, as to all real estate, by posting a like copy in some public place thereon; *provided*, that if the personal defendant cannot be found in the county in which said action is brought, then service may be made upon such defendant, by posting a copy of the summons, for twenty days, at the court-house door of said county. Summons
Proviso.

SEC. 42. The defendant may answer, which answer shall be verified — Answer.

First—That the taxes have been paid before suit.

Second—That the taxes, with costs, have been paid since suit; or, that such property is exempt from taxation under the provisions of section four of this act.

Third—Denying all claim, title, or interest, in the property assessed, at the time of the assessment.

Fourth—Fraud in the assessment, or fraud in failing, or neglecting, to comply with the provisions of this act, by which fraud the party, or property, assessed, has suffered injury; *provided*, however, that the acts herein required, between the assessment and the commencement of suit, shall be deemed directory merely; and no other answer shall be permitted.

SEC. 43. Said delinquent list, or copy thereof, certified by the county auditor, showing unpaid taxes against any person or property, shall be *prima facie* evidence in any court to prove the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law Delinquent
tax list, —
evidence.

in relation to the assessment and levy of such taxes have been complied with.

Judgment.

Proviso.

Liens.

Judgment
by default

Redemption.

SEC. 44. In case judgment is rendered for the defendant, it shall be general, without costs, and may be entered in favor of some one, or more, of them, and against others, as in other civil cases; in case judgment is for the plaintiffs, it may be entered against such defendant as is found liable to the tax, and for such amount, or portion thereof, as he, or they, shall be so adjudged liable; *provided*, that no personal judgment shall be rendered, unless the person against whom it is rendered shall have been personally served with the summons, or shall have appeared in said action. Judgment may be entered against the real estate and improvements, severally, for the taxes severally assessed and levied thereon, and when it shall appear upon the assessment roll, and not be disproved upon trial, that the real estate and improvements belong to the same person, or persons, then judgment may be rendered against said real estate and improvements, jointly, for the whole taxes thereon, or such part thereof as may be adjudged. Such judgments, rendered in the district court, shall be docketed and become liens upon all the property against which judgment is rendered, from the date of such assessment, and against all other real estate of the person assessed, subject to execution, for the amount of any judgment against him, from the time of such docketing, as in other civil cases; and the district attorney may file transcripts of judgments rendered in justices' courts under this act, with the county clerk, who shall thereupon docket such judgments, and they shall become liens from and after such docket entry, in like manner as judgments rendered in the district court, under this act; *provided*, however, that when the lien attaches against the property owing the taxes, such lien shall not be released until the delinquent taxes are paid thereon, and the county clerk may issue execution on such justices' judgments as on judgments rendered in the district court. Judgment may be rendered for want of an answer, as in other civil cases. In case any person shall be sued for taxes on any land, or improvements, of which he was the owner, or in which he had a claim, or interest, at the institution of the suit, and shall be discharged from personal liability under an answer, in conformity with the third subdivision of section forty-two, and such lands or improvements shall be sold under a judgment obtained against it, and shall thereafter be redeemed by such discharged defendant; or, if he shall pay the taxes and costs, to prevent a sale—then such personally discharged defendant shall have, and is hereby given, the right of recovery, over against the owner at the time of the assessment, for the full sum of taxes and costs, or redemption money paid; and in every case of such recovery, the judgment shall, in addition to the taxes and costs, or in addition to the redemption money paid, include twenty-five per cent. of the amount of taxes and

costs, or redemption money, as liquidated damages, and the receipt of the district attorney, for taxes and costs, or of the sheriff, for the redemption money, shall be sufficient evidence of the debt, and of its amount.

SEC. 45. An act to regulate proceedings in civil cases, in courts of justice of this territory, and the several amendments thereto, so far as the same are not inconsistent with the provisions of this act, are hereby made applicable to proceedings under this act; and any deed derived from a sale of real property under this act, shall be conclusive evidence of title, except as against actual frauds, or pre-payment of the taxes by one not a party to the action, or judgment, in, or upon which such sale was made, and shall entitle the holder thereof to a writ of assistance from the district court, to obtain possession of such property; *provided*, that the sheriff, in selling said property, shall only sell the smallest quantity that any purchaser will take and pay the judgment and all costs; and *provided*, further, that when property sold, belonging to minors, or persons under legal disability, they shall have, until six months after said disability is removed, to redeem said property, by paying the whole amount of the judgment, and all subsequent taxes and interests, paid by, and due to, the purchaser at said sale; but this provision shall not apply when the executor, or administrator, of the estate, or the father, or, in case of his death, the mother, or guardian, of such minor children, has been personally served with process; and *provided*, further, that the real estate so sold for taxes may be redeemed from such sale, as in case of sale upon execution, as provided in other civil cases, by paying to the sheriff the total amount of the judgment, and all costs, with thirty per cent. thereon; and *provided*, further, that if the same is paid within three months from the date of the certificate of sale, it shall be for the total amount of the judgment, and all costs, with fifteen per cent. thereon. All moneys collected under this act, except costs and charges, shall, without delay, be paid to the treasurer of the county, to be distributed to the proper funds; and each collection, and the date thereof, shall be entered opposite the proper name, or property, in the delinquent tax list, which shall be open to public inspection.

SEC. 46. There shall be allowed to all officers, except district attorneys, the fees allowed in other civil cases. The district attorneys shall be entitled to a compensation equivalent to ten per cent. on the amount of taxes due, to be added thereto, if paid after suit brought and before judgment, and if not so paid, then fifteen per cent. to be taxed as other costs in the case. All officers shall perform such services as may be required of them under this act, without the payment of fees in advance. All costs shall be taxed and entered in the judgment against the person, and the real estate and improvements, when the judgment is the same against all; or, if the judgments

Proviso.

against the person and property, are for different sums, then the costs may be apportioned by the court, as the same may be deemed just; *provided*, that no fees, or costs, shall be paid to any officer, or district attorney, unless the same be collected from the defendants; *provided*, that in counties where the officers receive a specific salary, the fees provided in this section shall be received by them for their own use.

District attorney, duties of.

Annual payments.

To file statement with county auditor.

Uncollected delinquent taxes.

SEC. 47. The district attorney shall, on the receipt of any money for taxes, enter the same on his delinquent list, opposite the name of the person delinquent, or opposite the description of the property, and shall, on the first Monday in each month, after the time fixed in this act for the commencement of actions against delinquent tax payers, pay to the county treasurer all moneys collected by him for taxes, taking duplicate receipts for the amount so paid; one of which receipts he shall, on the same day, file with the auditor, and shall, at the same time, file with said auditor a list of all judgments obtained by him up to that date, for taxes under the provisions of this act, stating therein the names of the defendants, if known; or, if unknown, a description of the property, the amount of each judgment, and the name of the court, or justice, in which, or before whom, said judgment was obtained. He shall, on the Saturday next preceding the first Monday in March, in each year, pay to the county treasurer, all moneys received by him for taxes, and not previously paid over, taking duplicate receipts therefor, one of which shall, in like manner, be filed with the auditor; and shall, at the same time, file with the auditor a list of all judgments obtained by him and not previously filed, as herein provided. He shall also, on the day last mentioned, make and file with the county auditor, an affidavit, stating that he has paid to the county treasurer all moneys collected by him for taxes, prior to that date, and filed the receipts therefor, and that the several lists filed by him, as herein directed, contain all judgments obtained by him under the provisions of this act. On the first Monday in August, in each year, the district attorney shall attend at the office of the county auditor, with the delinquent list or lists, and the auditor shall then carefully compare the same with the treasurer's receipts and statements filed by the district attorney, and if the same shall be found to be correct, the auditor shall give to the district attorney a receipt specifying the same. The district attorney shall, at the same time, deliver to the auditor a written statement of all delinquent taxes upon said delinquent list, or lists, remaining uncollected, or for which suit has not been brought, with his reasons in detail for not being able to collect the same, or for not bringing suit; and the auditor shall immediately file the said delinquent list, or lists, and statement, with the clerk of the board of equalization, and the board of equalization shall revise the same, by striking off such taxes as cannot be collected: the delinquent list or lists, shall then be returned to the auditor, who shall

note the changes made, and shall then return the same to the district attorney. The county auditor shall, in his next report to the territorial auditor, state the amount stricken off the delinquent list, or lists, by the board of equalization.

Duties of
county
auditor.

SEC. 48. If any district attorney shall fail, or refuse, to pay to the county treasurer, as provided in this act, any money collected by him for taxes, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding five thousand dollars, or by imprisonment in the county jail, for a period not exceeding one year, or by both such fine and imprisonment.

District
attorney,
refusal of
to pay over.

COUNTY AUDITOR, AND HIS DUTIES.

SEC. 49. At the next election held in the counties of this territory for county officers, and at such election every two years thereafter, there shall be elected by the qualified electors of each county, a county clerk, who shall be *ex officio* county auditor.

Election of.

SEC. 50. The county auditor shall, before he enters upon the duties of his office, execute two bonds, with sufficient sureties, to the people of the United States and Nevada Territory, one for the penal sum of five thousand dollars, or such greater sum as the board of commissioners may require, which shall be approved by the probate judge, and filed in the office of the territorial auditor, and the other for the penal sum of two thousand five hundred dollars, or such greater sum as the board of commissioners may require, to be approved by the probate judge, and filed in the office of the probate clerk, which bonds shall be conditioned for the faithful performance of all the duties of his office, as required by law.

Bond.

SEC. 51. If any county auditor shall, by himself, or deputy, neglect or refuse to perform the duties enjoined on him by the provisions of this act, he shall be guilty of misdemeanor in office, and, on conviction thereof, shall be punished by imprisonment in the territorial prison, for not more than one year, or by a fine of not less than two hundred, or more than one thousand dollars, or by both such fine and imprisonment, and shall be forthwith removed from office.

Penalty for
neglect of
duty.

SEC. 52. The auditor shall receive, in addition to the fees provided for in this act, an additional compensation, to be fixed by the board of commissioners, for services not otherwise provided for, not to exceed the sum of seventy-five dollars per month, payable quarterly, after having been allowed and audited as other claims; *provided*, that in those counties, or cities and counties, where the auditor receives a salary, the compensation allowed under this section shall be received by him, and paid into the county treasury, for the use of the county, or city and county, as the case may be.

Compensat'n

SEC. 53. On delivering the certified copy of the assessment

To charge
collector
full amount
of taxes.

roll to the tax collector, the auditor shall charge the tax collector with the full amount of the taxes levied, and shall forthwith transmit, by mail, to the territorial auditor, a statement of the amount so charged, and shall also, at the same time, transmit to the territorial auditor a statement of the number of poll-tax receipts delivered to the tax collector, and the number of the said receipts returned to him on settlement, which said returned receipts he shall forward to the territorial auditor, by such conveyance as the territorial auditor, either by general or special order, may direct, and shall, at the same time, make out and transmit, by mail, a statement of all territorial and county licenses, issued in the county since his last settlement in regard thereto, giving the number and aggregate amount of each kind of licenses issued.

To verify
statements.

SEC. 54. All statements which this act requires the auditor to make, shall be made under oath.

Duty of tax
collector.

SEC. 55. The auditor shall, from time to time, upon presentation to him of the receipt from the county treasurer, for moneys collected and paid over by the tax collector, credit him with the amount thereof, and shall, at the time required by law for the return of the delinquent list in each year, credit him with the amount of taxes then delinquent, and in case the tax list is transferred from one tax collector to another, he shall credit the one and charge the other with the amount then outstanding on the tax list, which amount shall be ascertained jointly by the outgoing and incoming tax collectors, at their own cost, without any expense to the territory or county.

Auditor
to prepare
printed form
for licenses.

SEC. 56. The auditor shall prepare printed forms (similar to those furnished by the territorial auditor), for all licenses the entire proceeds of which are paid into the county treasury, and each license so prepared by him shall be first numbered by the treasurer, and by said treasurer charged to the auditor, in a book kept for that purpose; the auditor shall then issue said licenses to the tax collector, from time to time, as the same may be required, and charge the collector with the same, and upon the first Monday in each month, the collector, with the treasurer, shall appear at the office of the auditor, and settle for all licenses by him sold.

Monthly
report of
county
auditor.

SEC. 57. The county auditor shall, on the Tuesday next following the first Monday in each month, report, by mail, to the territorial auditor, the amount of money in the county treasury, belonging to the territory, stating specifically in said report the amount received from each source of revenue, prior to making which report he shall examine the books of the county treasurer, and shall administer to the treasurer an oath, declaring that said books are correct, and that all the money received by him, for, or on account of, the territory, has been duly entered therein. The territorial auditor shall forward to the auditor, blank forms, for the accounts to be rendered, and for the oath to be taken, under this section, and the auditor

Territorial
auditor to
forward
blanks.

shall, from time to time, furnish the tax collector with a sufficient number of licenses, taking his receipt therefor.

POLL-TAX.

SEC. 58. Each male inhabitant of this territory, over twenty-one, and under fifty years of age, and not by law exempt, shall pay a poll-tax, for the use of the territory and county, of two dollars; *provided*, the same be paid between the first Monday of March and the first Monday in August; but if said poll-tax is not paid prior to the first Monday in August, it shall be three dollars; and seventy-five cents of the extra dollar shall be paid to the county treasurer for the school fund, and twenty-five cents be retained by the tax collector as fees, in addition to ten per cent. on the first two dollars, which it shall be lawful for him to retain, as compensation for the collection of said poll-tax.

SEC. 59. The territorial auditor shall, before the first Monday in March of each year, cause proper blank receipts, for poll-taxes, to be printed, of a uniform appearance, changing the style thereof each year; and said auditor, after signing and numbering them, shall cause a number thereof, equal to the probable number of inhabitants in each county, liable to pay poll-tax, to be immediately forwarded to the county treasurer of each county, who shall sign them, or so many of them as may be required, and make an entry thereof in a book, to be kept for that purpose, and thereupon deliver them to the county auditor, who shall likewise sign them, and make an entry of the number he receives, in a book, to be kept by him for that purpose.

SEC. 60. The county auditor shall, from time to time, issue to the tax collector so many of the receipts for poll-tax as he may need, taking his receipt therefor.

SEC. 61. No receipts for poll-tax, other than those mentioned in the fifty-ninth section of this act, shall be used, or given, for the payment of any such tax; and any tax collector who shall receive any poll-tax, without delivering the proper receipt, required by law, shall be guilty of a misdemeanor for each poll-tax so received, and, on conviction thereof, shall be punished by imprisonment in the county jail, not less than three months, nor more than one year, and by a fine of not less than one hundred, nor more than one thousand dollars, for each offense, or by both such fine and imprisonment.

SEC. 62. Upon receiving such receipts from the county auditor, the tax collector shall give a receipt to said auditor for the same; and the said auditor shall immediately charge the same to the tax collector so receiving them. All receipts delivered to the tax collector before the first Monday in August, shall be filled out with the sum of two dollars, and two dollars shall be charged to him for each one so delivered; and all such receipts, delivered to the tax collector after the

Poll-tax
receipts.

first Monday in August, in each year, shall be filled out with the sum of three dollars, and three dollars shall be charged to him for each one so delivered.

Tax collect'r,
additional
bond.

SEC. 63. The board of commissioners of each county shall exact (if they deem it advisable) an additional bond from the tax collector, with additional sureties, in such penal sums as the said board shall believe to be necessary to insure the prompt and faithful payment to the county treasurer, of all moneys received by such tax collector for poll-tax.

Evidence of
payment.

SEC. 64. No person shall be deemed or held to have paid his poll-tax, unless he is able to exhibit a receipt therefor, issued from the office of the territorial auditor, or otherwise prove the payment of the same.

Forging
receipts.

SEC. 65. Any person or persons, who shall pass, sell, or transfer, or attempt to pass, sell, or transfer, or who shall forge, or fraudulently issue any receipt or receipts, for poll-tax, contrary to the spirit or intention of this act, shall be guilty of felony, and, on conviction thereof, shall be punished by imprisonment in the territorial prison, for not less than one year, nor more than two years.

Enforcement
of poll-tax.

SEC. 66. To enforce the collection of poll-taxes, as provided in this act, the tax collector may seize so much of any and every species of personal property whatever, claimed by any person liable to, and refusing or neglecting to pay his poll-tax, or property, in the possession of or due from any other person, and belonging to such person so refusing to pay such poll-tax, as will be sufficient to pay such poll-tax and costs of seizure, which costs shall not exceed three dollars; and shall, and may sell the same at any time or place, upon giving a verbal notice, one hour previous to such sale; and any person indebted to another, liable to pay poll-tax, but who has neglected or refused to pay the same, shall be liable to pay said tax for such other person, after service upon him by the tax collector, of a notice in writing, stating the name or names of the person or persons so liable, and owing poll-tax, and such debtor may deduct the amount thereof, with the costs of serving said notice, which shall be one dollar (and for which he shall be equally responsible), from such indebtedness.

Sales valid.

SEC. 67. The tax collector, after having deducted the poll-tax for which such property was sold, and the necessary fees and costs of sale, shall return the surplus of the proceeds to the owner of the property; a delivery of the possession of the property by the tax collector to any purchaser, at any such sale, shall be a sufficient title in the purchaser, without execution of a certificate of purchase thereof, by the tax collector.

Giving false
name, a mis-
demeanor.

SEC. 68. If any person shall give to the tax collector, or his deputy, a false name, or shall refuse to give his name, he shall be guilty of misdemeanor, and shall be arrested upon complaint of the tax collector, or his deputy, and, upon conviction before a justice of the peace, he shall be punished by a fine of not less

than ten dollars, or more than one hundred dollars, or by imprisonment for a term not less than two days, nor more than three months, or by both fine and imprisonment.

SEC. 69. Active members of fire-companies shall be, and are hereby declared exempt from paying poll-tax. Persons exempt.

SEC. 70. All money collected as poll-tax, under the provisions of this act, after the expenses of collection are paid, shall be paid into the county treasury for county purposes. Disposition of moneys.

SEC. 71. On the first Monday of each month, the tax collector shall make oath, before the county auditor, of the total number of poll-taxes collected by him during the last preceding month, and shall, at the same time, file the county treasurer's receipt for the total amount of poll-taxes collected, less ten per cent. allowed by this act for fees; and, on the first Monday in August, he shall return all the two dollar poll-tax receipts by him received, and not used, and shall pay to the treasurer the total amount collected and not paid in theretofore, subject to the deduction aforesaid; and he shall, at the same time, receive from the territorial auditor, through the treasurer and county auditor, a sufficient number of three dollar receipts to enable him to collect taxes from all the polls in his county, who have not then paid; and, on the Saturday next preceding the first Monday in March, of each year, the tax collector, and the treasurer, shall attend at the office of the county auditor, and the county auditor shall then and there finally settle with the tax collector for all poll-tax receipts signed by the treasurer, and delivered to him; and the tax collector shall then pay over the amount of all poll-tax receipts received by him, and not then or theretofore returned; and all the poll-tax receipts returned by the tax collector, shall be forthwith transmitted by the county auditor, with his annual statement, to the territorial auditor; and no poll-tax receipts shall be valid for any year, unless issued after the first Monday of March, in such year. Tax collect'r, monthly returns of.

SEC. 72. At the settlement with the tax collector required on the first Monday in December, it shall be the duty of the county auditor, and he is hereby required, to forthwith transmit to the territorial auditor, a certified statement of the amount of poll-taxes paid over to the county treasurer of his county, up to that time, and he shall deliver a duplicate of such statement to the county treasurer; and, on the final settlement on the Saturday next preceding the first Monday of March, in each year, the county auditor shall, immediately upon the conclusion thereof, transmit a certified statement to the territorial auditor, stating therein the number of all receipts for poll-tax delivered by the county treasurer to him, the number of such receipts issued by him to the tax collector, the number of such receipts returned by the tax collector, and the number of such receipts then transmitted to the territorial auditor. Yearly settlement.

To transmit returned receipts.

To transmit statement to territorial auditor.

LICENSES.

SEC. 73. There shall be levied, and collected by the tax collector, a license tax, as follows :

Billiard
tables, etc.

First. From each proprietor, or keeper of a billiard table, not kept for the exclusive use of the owner, or his family, for each table, five dollars per quarter ; for a nine, or ten pin, or bowling alley, twenty dollars per quarter ; license to be granted for a term not less than three months. .

Theaters.

Second. From the manager, or lessee, of every theater, five dollars per day, if granted for a less term than one month ; if granted for one month, one hundred dollars shall be paid ; if granted for three months, two hundred dollars ; if granted for one year, six hundred dollars ; and, for each exhibition of serenaders, or opera, or concert signers, the same payment for license as is required for theatrical performances.

Circus, etc.

Third. For each exhibition of caravan, or menagerie, or any collection of animals, for public amusement, twenty dollars for each exhibition ; and, for each show of any figures, and, for each exhibition of circus, or wire dancing, or sleight of hand, for reward, twenty dollars per day.

Insurance
companies.

Fourth. From each and every insurance company, incorporated in pursuance of the laws of this territory, and transacting an insurance business therein, twenty-five dollars per quarter year.

Agents.

Fifth. For each and every insurer, or insurance company, foreign, or otherwise, not chartered by this territory, and transacting an insurance business therein, or the agent, or agents thereof, one hundred dollars per quarter year.

Pawnbrok'rs

Sixth. From each pawnbroker, one hundred dollars per quarter year.

Intelligence
offices.

Seventh. From each keeper of an intelligence office, fifteen dollars per quarter.

Who shall
obtain
license.

SEC. 74. Licenses shall be obtained by the person or persons, private association, or corporation, doing business in this territory, engaged in one or more of the following occupations : to wit : In buying or selling foreign or inland bills of exchange, or, in loaning moneys at interest, or in buying and selling notes, bonds, or other evidences of indebtedness, of private persons, or territorial, county, or city stocks, or indebtedness, or stocks of incorporated companies ; or, in buying or selling gold dust, or silver, bullion, gold or silver coin ; keepers of savings' banks ; or engaged as common carriers, in transmitting or carrying gold dust, gold or silver coin, or bullion, from any place in this territory to any place without this territory, or from one to another place within the territory, for profit ; or engaged in receiving general, or special deposits of gold dust, gold, or silver coin, or bullion, for profit ; *provided*, that checks used in the transaction of business between parties within this terri-

Proviso.

tory, shall not be included as being liable to the provisions of this act.

SEC. 75. Brokers, or such persons, associations, or corporations, as are engaged in one, or more, of the following occupations, to wit: In loaning moneys at interest, or in buying, or selling, notes, bonds, or other evidences of indebtedness, of private persons, or in buying, or selling, territory, county, or city stocks, or other evidences of territory, county, or city indebtedness, or stocks, or notes, bonds, or other evidences of indebtedness, of incorporated companies, or in buying, or selling, gold dust, gold, or silver bullion, or gold, or silver coin, or in receiving special, or general, deposits of gold dust, gold or silver bullion, or gold or silver coin, for profit; or in carrying, or transmitting, as common carriers, gold dust, or gold or silver bullion, or gold or silver coin, from any place within this territory, to any place without this territory, or from one place to another within this territory, for profit; or in keeping, or conducting, savings' banks, shall be divided into five classes, as follows: Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter, and over, shall constitute the first class; those doing business to the amount of two hundred thousand dollars, and less than two hundred and fifty thousand dollars, per quarter, shall constitute the second class; and those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars, per quarter, shall constitute the third class; those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars, per quarter, shall constitute the fourth class; those doing business in any amount under fifty thousand dollars, per quarter, shall constitute the fifth class. The licenses shall be obtained from the tax collector, and shall be given, for the first class, upon the payment of one hundred dollars per quarter; for the second class, eighty dollars per quarter; for the third class, forty dollars per quarter; for the fourth class, twenty-five dollars per quarter; for the fifth class, fifteen dollars per quarter; said amounts to be paid to the collector of taxes, in each county in which the party applying therefor desires to, or does, transact any, or all, of the occupations specified in section seventy-four, and a separate license shall be obtained for each branch establishment, or separate house, of such business located in the same county.

Brokers, etc.

Savings' banks.

Licenses for the various classes.

Rates of.

SEC. 76. Bankers, or such persons, associations, or corporations, as are engaged in buying, or selling, foreign or domestic bills of exchange, or drafts, shall be divided into five classes, as follows: Those doing business in the aggregate to the amount of five hundred thousand dollars, or over, per month, shall constitute the first class; those doing business to the amount of three hundred thousand dollars, and less than five hundred thousand dollars, per month, shall constitute the second class; those doing business to the amount of two hun-

Bankers dealing in bills of exchange.

Rates of.

dred thousand dollars, and less than three hundred thousand, per month, shall constitute the third class; those doing business to the amount of one hundred thousand dollars, per month, and less than two hundred thousand dollars, per month, shall constitute the fourth class; those doing business, in any amount less than one hundred thousand dollars, per month, shall constitute the fifth class. The license for the first class shall be given, upon the payment of one hundred dollars per month; for the second class, upon the payment of sixty dollars per month; for the third class, upon the payment of forty dollars per month; for the fourth class, upon the payment of twenty-five dollars per month; for the fifth class, upon the payment of fifteen dollars per month.

Tax collector's duties of.

Time for procuring licenses.

Municipal licenses valid.

Penalty.

SEC. 77. Each tax collector shall make diligent inquiry and examination as to all persons in his county liable to pay license, as provided in this and foregoing sections; and the collector is hereby empowered, and it shall be his duty, to require each person to state, under oath, or affirmation, the probable amount of business which he, or the firm of which he is a member, or for which he is an agent or attorney, or the association, or corporation, of which he is president, secretary, or managing agent, will do in the next succeeding three months; and, also, to make a statement, under oath, if required, in order to carry out the provisions of section eighty of this act, and, thereupon, such person, agent, president, secretary, or other officer, shall procure a license from said tax collector, for three months, of the class of which such party is liable to pay; and in all cases where an under estimate has been made by the party applying, the party making such under estimate, shall be required to pay a double license for the next quarter. License shall be procured immediately before the commencement of any business or occupation liable to license tax under this and foregoing sections. Such license shall authorize the party obtaining the same, in his town, city, or particular locality in the county, to transact business as provided in such license; *provided*, however, that nothing in this act, nor in any license issued under it, shall be construed to authorize any person to carry on any business within the limits of any incorporated city, or town, authorized by its charter to impose or levy city or town license taxes, unless such person shall, in addition to the license, if any, required by this act, also procure the license or licenses, required by the ordinances, or orders, of such city or town; and *provided*, further, that any person or persons, who shall commence, or continue to carry on, or transact any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by this act, without procuring the proper license, as herein required, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten, nor more than one hundred dollars; and *provided*, further, that if any person or

persons, required by the provisions of this act to take out a license, shall fail, neglect, or refuse to take out such license in the manner provided in this act, or shall carry on, or attempt to carry on business without such license, the collector may direct suit, in the name of the people of the United States in the territory of Nevada, as plaintiffs, to be brought against him, or them, for the recovery of the license money, and in such case, either the collector or attorney may make the necessary affidavit, and a writ of attachment may issue, without any bonds being given on behalf of the plaintiffs, and in case of a recovery by the plaintiffs, fifteen dollars liquidated damages shall be included in the judgment and costs, and be collected from the defendant, and five dollars thereof shall be paid to the collector, and ten dollars to the attorney prosecuting the suit. Upon the trial of any criminal action provided for by this section, the defendant shall be deemed not to have procured the proper license, unless he either produces it, or proves that he did procure it; but he may plead in bar of the criminal action, a recovery against him, and the payment by him, in a civil action, of the proper license money, damages and costs.

Recovery of
license
moneys.

Fees of
officers.

Proof of
license to be
the only
evidence.

SEC. 78. Every person who has a fixed place of business, who may deal in goods, wares or merchandise, wines, or distilled liquors, except the agricultural productions of this territory (when sold by the producers thereof), and except such as are sold by auctioneers, or commission merchants, under license, or commission, according to law, shall pay, quarterly, an amount of money for license, as required by the class in which such person is placed by the tax collector of the county, under the provisions of the succeeding section; *provided*, always, that nothing herein shall be construed to extend to physicians, surgeons, apothecaries, or chemists, as to any wines, or spirituous liquors, which they may use in the preparation, or compounding, of medicines.

Traders'
licenses.

Proviso.

SEC. 79. Every person who shall sell, or vend, any goods, wares, or merchandise, wines or distilled liquors, drugs or medicines, jewelry, or wares of precious metals, and persons who keep horses or carriages for rent, or hire, except mules, horses, or animals used in the transportation of goods, shall obtain, from the tax-collector of the county in which such business may be transacted, for each of the branches of business in this and the preceding section enumerated, a license for the transaction of that business, at the following rates, to wit: All persons dealing as aforesaid, shall be classed according to the amount of the average monthly sales, or rents, effected in the following manner, that is to say, those who are estimated to make average monthly sales to the amount of one hundred thousand dollars, or more, shall constitute the first class; of seventy-five thousand dollars, and less than one hundred thousand dollars, shall constitute the second class; of fifty thousand dollars, and less than seventy-five thousand, shall constitute

Merchants'
licenses, etc.

Livery
stables, etc.

Class of
licenses.

Rates of.

Division of
money.Tavern
licenses.

Rates of.

Peddler's
license.

the third class; of forty thousand dollars, and less than fifty thousand dollars, shall constitute the fourth class; of thirty thousand dollars, and less than forty thousand dollars, shall constitute the fifth class; of twenty thousand dollars, and less than thirty thousand dollars, shall constitute the sixth class; of ten thousand dollars, and less than twenty thousand dollars, shall constitute the seventh class; of five thousand dollars, and less than ten thousand dollars, shall constitute the eighth class; of one thousand dollars, and less than five thousand dollars, shall constitute the ninth class; of all amounts under one thousand dollars, the tenth class. The licenses for the first class shall be given upon the payment of fifty dollars per month; for the second class, thirty-seven dollars and fifty cents per month; for the third class, twenty-five dollars per month; for the fourth class, twenty dollars per month; for the fifth class, fifteen dollars per month; for the sixth class, ten dollars per month; for the seventh class, seven dollars and fifty cents per month; for the eighth class, five dollars per month; for the ninth class, three dollars and seventy-five cents per month; for the tenth class, two dollars and fifty cents per month; *provided*, that the sale of liquors and wines, by persons licensed under this section, shall not be in less quantity than one quart-measure. The moneys collected for licenses provided to be granted by this and the preceding sections of this act, shall be paid into the county treasury, for county purposes.

SEC. 80. All tavern and inn-keepers, and all persons who may dispose of any spirituous, malt, or fermented liquors or wines, in less quantities than one quart, shall, before the transaction of any such business, take out a license, or licenses, from the tax collector, as prescribed in this act, and make therefor the following payment, to wit: Those making sales to the amount of ten thousand dollars, or more, as a monthly average, shall constitute the first class; sales to the extent of five thousand dollars, and not exceeding ten thousand dollars, as a monthly average, shall constitute the second class; and all sales less than five thousand dollars, shall constitute the third class. The licenses to be paid by vendors of the first class, shall be seventy-five dollars per month; of the second class, shall be fifty dollars per month; of the third class, shall be ten dollars per month. The moneys collected for licenses, under the provisions of this section, shall be paid into the county treasury, for county purposes.

SEC. 81. Every traveling merchant, hawker, or peddler, who shall carry a pack, and vend wares, goods, or merchandise, of any kind, shall pay, for each license, twenty dollars per month; and every such traveling merchant, hawker, or peddler, who shall use a wagon, or one, or more, animals, for the purpose of vending any wares, or merchandise, of any kind, or wines, fermented liquors, or spirituous liquors, shall pay, for each license, thirty dollars per month; *provided*, that

nothing in this section shall be so construed as to apply to the agricultural productions of this territory, or to any fruit, from any place. The county auditor shall issue to the tax collector the licenses contemplated in this section, which licenses, so issued, shall authorize the holders of the same to vend goods, wares, and merchandise, as set forth in such licenses, in the county where such licenses are obtained; and it is hereby made the duty of every justice of the peace, constable, sheriff, tax collector, and peace officer, to demand the license of any such peddler, or hawker; and if such person be found not to have a license, as directed by law, the person so offering any goods, or wares, for sale, shall be guilty of misdemeanor, and, on conviction, shall be fined in any sum not less than fifty, nor more than one hundred dollars. The money collected under the provisions of this section, shall be paid into the county treasury, for county purposes.

Duties of
county
officers.

SEC. 82. The licenses provided to be granted by this act, shall be granted for three, six, or twelve months, at the option of the party applying for such licenses.

Term of
license.

SEC. 83. The territorial auditor shall cause to be printed, a sufficient number of blank licenses, of all classes mentioned in this act, except where the entire amount is paid in, for county purposes, for three, six, or twelve months; each license shall also contain a blank receipt, to be signed by the county tax collector, on delivery of said license to the purchaser thereof. He shall forward to the treasurer of each county, a sufficient number of blanks, for the use of the county, which shall be charged to the said treasurer on the territorial auditor's books. The treasurer shall countersign the same, and deliver them to the county auditor, taking his receipt therefor.

Blank
licenses to
be printed.

SEC. 84. The county auditor shall, from time to time, deliver to the tax collector as many of such licenses as may be required; and shall sign the same, and charge them to the tax collector, specifying the class of license in the charge.

Duty of
county
auditor.

SEC. 85. On the first Monday in each month, the tax collector shall return, to the county auditor, all licenses not issued; and the county auditor shall credit him with the amount so returned, so that the account shall show the amount of money received for licenses issued, and open a new account with the tax collector for the next month.

Licenses not
issued to be
returned.

SEC. 86. The county auditor, and treasurer, of each county in the territory, shall, on the first Monday in March, June, September, and December, make a joint statement, to the board of commissioners, showing the whole amount of collections (stating particularly the source of each portion of the revenue), from all sources, paid into the county treasury; the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what fund; the total amount of warrants drawn and unpaid; the accounts, or claims, audited, or allowed, and unpaid, and

To make
statement
to board of
commiss'rs.

the fund out of which they are to be paid; and generally make a full and specific showing of the financial condition of the county.

To report
quarterly to
territorial
auditor.

SEC. 87. Once in three months, as in the preceding section provided, the county auditor shall report to the territorial auditor, the number of territorial licenses issued by the tax collector, for the preceding three months, and the amount of money paid for the same; and the territorial auditor shall hold the treasurer responsible, on his official bond, for all licenses and receipts issued to him under this act, not accounted for, or returned, on the Saturday next preceding the first Monday in March, in each year.

Issuing
fraudulent
licenses.

Penalty.

SEC. 88. If either the treasurer, county auditor, tax collector, or any other person, shall issue, have in his possession, with intent to circulate, or put in circulation, any other licenses than those forwarded to the treasurer by the territorial auditor, the person so offending shall be guilty of felony, and, on conviction, be sentenced to imprisonment in the territorial prison, for a term of not less than one year, nor more than four years; and any tax collector who shall receive the money for a license without delivering to the person paying for the same, the license paid for, or who shall insert the name of more than one person, or firm therein, shall be guilty of misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, and by imprisonment in the county jail, not less than three months, nor more than one year.

County
treasurer,
duties of.

SEC. 89. Each county treasurer shall keep all money received by virtue of his office, in his own possession, or on special deposit, and no person, except the treasurer, or one of his deputies, shall receive or pay out any money in his office; and when any money shall be paid to the county treasurer, he shall give to the person paying the same, a receipt therefor, which receipt such person shall forthwith deposit with the county auditor, who shall charge the treasurer therewith, and give the person paying the same an acquittance.

County
treasurers to
be ready to
settle with
territorial
auditor.

SEC. 90. The treasurers of the respective counties shall, at all times, hold themselves in readiness to settle and pay all moneys in their hands, whenever required so to do, by an order signed by the auditor and treasurer of the territory; and the treasurer and auditor are hereby authorized to draw such orders whenever they deem it proper. The treasurers shall, on the second Mondays of November, February, May, and August, of each year, proceed to the territorial capital, and shall settle in full with the auditor, and pay over in cash to the treasurer of the territory, all funds which shall have come into their hands as county treasurers, for the use and benefit of the territory, taking therefor a receipt from the treasurer of the territory, which receipt he shall forthwith file with the auditor; and any county treasurer who shall fail; neglect or refuse, to appear at

the office of the auditor and treasurer, on the days above specified, or within fifteen days thereafter, and then and there settle and make payment, as required by this act, shall forfeit all fees, per centage, and mileage, which would have otherwise been due him on said settlement; and the auditor is hereby authorized and required to withhold all such fees, per centage, and mileage, and require the same to be paid into the treasury for the use and benefit of the territory. Before making any settlement, each county treasurer shall produce to the auditor of the territory, a report from the county auditor, together with a duplicate thereof, stating specifically the amount due the territory from each particular source of revenue, the original of which shall be filed with the auditor of the territory, who shall enter upon the same, and also upon the duplicate, the cash paid to the treasurer of the territory, and also, the commissions and mileage allowed to the county treasurer for his payments. The county treasurer shall file the duplicate report with the county auditor of his county, whereupon the auditor shall balance the treasurer's account, and it shall be the duty of the auditor to furnish the treasurer with the report which such treasurer is required to produce in making his settlement with the territory.

County treasurer to produce report of county auditor.

SEC. 91. And each county treasurer shall, at the time of making his settlement with the auditor, produce to him statements of all transactions had in territorial and county licenses and poll-tax receipts, since the last settlement, which statement shall be made by the county auditor, according to the forms which shall be furnished him by the auditor of the territory for that purpose; and each county treasurer shall, at the same time, produce to the auditor of the territory, the certified statement of the county auditor, of the amount allowed and paid to the assessor, tax collector, and auditor, as prescribed by this act; and no county treasurer shall be allowed to make any settlement with the auditor of the territory, or in any manner to release himself and bondsmen from liability for the full amount by him received, unless he produces to the auditor the statements required by this section.

To produce statement.

SEC. 92. Whenever any allowance is made to any assessor, tax collector, or auditor, as in this act provided, the clerk of the board of commissioners shall certify the account so allowed to the auditor, who shall draw his warrant on the county treasury for that part of the same which the county is required to pay, which shall be in proportion to the amount of taxes levied for territorial and county purposes respectively; and the auditor shall make a certified copy of the account, and indorse thereon the amount due from the territory, and indorse on the account remaining in his office the same, and shall furnish such copy, with the indorsement thereon, to the county treasurer, who shall pay out of the money belonging to the territory the amount indorsed on such account, to the assessor, tax collector,

County auditor to draw his warrant.

Indorsement

or auditor, and take his receipt thereon; and the treasurer, on making his quarterly or semi-annual settlement, shall present, with the auditor's statement, such copy of the account allowed by the board to the assessor, tax collector, or auditor, indorsed and receipted as herein provided, and the auditor shall allow him for the amount so paid.

Using funds. SEC. 93. If any tax collector, or county treasurer, shall, either directly, or indirectly, use, loan, employ, or in any manner place out of his possession, otherwise than as on special deposit, any funds belonging to, or collected by, or paid to him, for the use and benefit of either the territory, or of any county, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding five thousand dollars, or imprisonment in the territorial prison, for any time not exceeding one year, or by both such fine and imprisonment. The treasurer, tax collector, assessor, auditor, clerk of the board of equalization, and each member of such board, shall each separately perform the duties [required] of him in his office, and shall not perform the duties of any two offices, under this act, except as provided by law; and any officer who shall, at the same time, perform the duties of any two offices in any manner connected with the public revenue, except in the manner expressly authorized by law, or any collecting, or disbursing, officer, who shall refuse, or neglect, the performance of the duties required by this act, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the territorial prison, not more than one year, and by a fine of not less than two hundred, nor more than one thousand dollars, or by both such fine and imprisonment, and shall forthwith be removed from office.

Penalty.

Neglect of duties, a misdemeanor.

Books, etc. to be open to public inspection. SEC. 94. The books, papers and accounts of each officer, in regard to the assessment, or collection of taxes, or to the receiving, auditing, or disbursing moneys collected for the use or benefit of the territory, or of any county, shall, at all times during office hours, when not necessarily in use by the officers, be open for any person whomsoever to inspect or copy, without any fee or charge.

Tax collectors, per centage of. SEC. 95. The collectors of taxes, in the counties of this territory, shall be allowed for collecting all taxes, except poll-taxes, license tax, and the following rates on all moneys collected and paid over by them in each fiscal year, commencing on the first Monday in March: six per cent. on the first ten thousand dollars; four per cent. on all over ten thousand dollars, and under twenty thousand dollars; three per cent. on all over twenty thousand, and under fifty thousand dollars; and two per cent. on all sums over fifty thousand dollars. The collector of taxes shall also receive one dollar for each business license sold, one half of which shall be paid to the county auditor. The assessor, and his deputies, shall keep a

correct account of the number of days they have been employed in the discharge of their official duties, and shall verify the same, on oath, before the clerk of the board of commissioners, or other person qualified to administer oaths; and then shall present said account to the board of commissioners, who, if satisfied of the correctness of the same, shall allow it, and order payment to be made at the rate of eight dollars per day. All county officers who are required, under this act, [to copy] any assessment roll, or delinquent list, shall receive, in payment for the same, an amount to be allowed by the board of commissioners of the respective counties, not to exceed ten cents per folio of one hundred words. He shall also be allowed thirty cents per mile for traveling to and from the seat of government, to make his quarterly, or semi-annual settlement. No county treasurer shall be entitled to any per centage, or compensation, upon school fund moneys.

Assessors,
compensation of.

County
officers, copy
fees of.

Mileage.

SEC. 96. The amount allowed and paid out of the county treasury, to the collectors of taxes, assessors and auditors, for services under this act, shall be apportioned by the auditor, in proportion to the amount of territorial tax, and charged to the territory and county, ratably in said proportion, and a verified statement of the amount allowed by the board of commissioners to said officers, shall entitle the auditor to credit the county treasurer with such amounts.

Territory
and county
to pay
officers.

SEC. 97. Whenever any assessor, collector, auditor, treasurer, or other officer, upon whom any duties devolve under this act, or under any other revenue act of this territory, shall willfully neglect, or refuse, to perform any such duties, shall perform them in a careless, or incompetent manner, he shall be deemed guilty of a misdemeanor, and shall be removed from office in the manner prescribed by law; and when an issue of fact shall have been joined under any presentment made, or proceeding commenced, to remove such officer from his office, the board of commissioners (and in case such officer be a commissioner), the probate judge, shall have power to suspend such assessor, collector, auditor, treasurer, district attorney, or other officer, from his powers and duties under this act, and under any other revenue act, and to appoint a competent person in his place, until the proper tribunal shall have either removed, or acquitted such suspended officer; and, any act on or about the revenue, or the assessment, or the collection of taxes, or sale of property for the non-payment of taxes, performed by any such temporary officer, shall be as valid, and of the same force and effect, as if performed by the suspended officer; *provided*, however, that such appointee shall first qualify and give such bond, with sureties, for the faithful performance of the duties of such office, as may be required of persons elected thereto.

County
officers.

Penalty for
neglect of
duty.

Proviso..

SEC. 98. Nothing contained in this act shall be construed so as to prohibit any county, city, or town, from levying and

Construction
of act.

collecting general or special taxes, in accordance with the provisions of its charter, or of any special act.

To make
yearly set-
tlement.

SEC. 99. Each assessor, tax collector, district attorney, and county treasurer, shall, on the Saturday next preceding the first Monday in March, in each year, attend at the office of the county auditor, for the purpose of making a settlement with him, on account of all transactions connected with the revenue for the year ending on that day; and, each and every officer, whether assessor, tax collector, district attorney, treasurer, or auditor, on going out of office, shall deliver to his successor in office, all the public money, books, accounts, papers, and documents, appertaining to his office and in his possession, taking a receipt therefor.

Billiard
tables, etc.,
may be sold
for taxes or
license.

SEC. 100. That, for the purpose of collecting the revenue of the territory, and preventing the evasion of the license laws now in force upon the general statutes of this territory, all billiard tables, bar fixtures, and furniture, belonging to, or in use, for the purpose of carrying on the business of any billiard, drinking saloon, restaurant, or eating-house, are held liable for the amount due for the license tax assessed on the same; and, it is hereby expressly provided, that, upon the failure of the parties keeping any such establishment, or exercising ownership therein, to pay the license of the same, in manner and form as provided by law, the tax collector of the county, town, or district, where such establishment may be located, or any properly authorized officer, whose duty it shall be to enforce the collection of any such license, may seize any such billiard table, bar fixtures, saloon furniture, and such appurtenances, and shall proceed to sell, as upon execution at law, any such articles, or so much thereof as may be requisite for the payment of such tax or license, as may be due and owing on account of the same.

CHAP. LI.—*An Act relating to the Support of the Poor.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

County com-
missioners to
superintend.

SECTION 1. The boards of county commissioners, of the several counties of this territory, are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

Relatives to
support in
certain cases.

SEC. 2. Every poor person, who shall be unable to earn a livelihood, in consequence of bodily infirmity, idiocy, lunacy, or other cause, shall be supported by the father, grandfather,

mother, grandmother, children, grandchildren, brothers, or sisters, of such poor person, if they, or either of them, be of sufficient ability; and, every person who shall fail to support his or her father, grandfather, mother, grandmother, child, grandchild, sister, or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative resides in the county, or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners, for the use of the poor, as aforesaid, before any justice of the peace, or any court having jurisdiction; *provided*, that when any person becomes a pauper from intemperance, or other bad conduct, he shall not be entitled to any support from any relation, except parent and child.

Forfeit for neglect of relatives.

Intemperance.

SEC. 3. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of such poor persons shall be next called upon, and, if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and, if there be no brothers and sisters, the grandchildren of such poor person shall be called on, and then the grandparents; but married females, whilst their husbands live, shall not be liable to a suit, except, that in cases where the grandchildren shall become paupers, the grandparents shall not be liable for but one half the amount of such charge, or *vice versa*.

Relatives called upon for.

SEC. 4. When any poor person shall not have relatives in any county in this territory, as are named in the preceding section, or such relatives shall not be of sufficient ability, or shall fail, or refuse, to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

County to support.

SEC. 5. When any minor shall become, or be likely to become, chargeable to the county, either because of being an orphan, or because the parents, or other relations, as aforesaid, are unable, or refuse, to support such minor, it shall be the duty of the county commissioners to bind such minor, as an apprentice, to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall, in all respects, be to the tenor and effect as required in the act concerning apprentices, and, in the absence of such law, in such manner as they shall deem for the best interests of said minor.

County commissioners to apprentice minors.

SEC. 6. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick in any county of this territory, not having money or property to pay his board, nursing, or medical aid, it shall be the duty of the

Sick paupers

Death and
burial.

Allowance.

Residence of
paupers.

Removal of
non-resident
paupers.

Pauper to be
notified.

When not
entitled to
relief.

County
work-houses.

Penalty for
transporting
paupers.

commissioners of the proper county, on complaint being made, to give, or order to be given, such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said commissioners shall give, or order to be given, to such person a decent burial; and the said commissioners shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

SEC. 7. When the application is made by any pauper, to the board of county commissioners of any county in this territory, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of said county for twelve months immediately preceding the day upon which such application was made.

SEC. 8. When application is made by any pauper, to the board of county commissioners, as aforesaid, and it shall appear to the satisfaction of said board, that the person so applying for relief, has resided in said county agreeably to the provisions of the foregoing section of this act, he shall be entitled to all the relief provided by this act; but if, on the contrary, it shall appear, to the satisfaction of said board, that such pauper has not been a resident of said county, agreeably to the provisions of the seventh section, they shall proceed to remove from their county, at the expense of said county, such pauper to the county where such pauper may have his residence, or may, if they think best, issue a notice, directed to some constable of the county, which notice said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county; and after so serving said notice, by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the said clerk of the board of county commissioners issuing the same, noting the time and manner of service.

SEC. 9. After service of such notice, as aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners shall deem it absolutely necessary.

SEC. 10. The board of county commissioners of any county in this territory, may, if they think proper, cause to be built, or provided, in their respective counties, work-houses for the accommodation and employment of such paupers as may, from time to time, become a county charge, and said work-house and paupers shall be under such rules and regulations as said board of commissioners may deem proper and just.

SEC. 11. If any person shall bring and leave any pauper in any county in this territory, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by, and to the use of, such county, in a civil action before any court having jurisdiction of the same.

CHAP. LII.—*An Act to incorporate "The Virginia, Carson, and Truckee Railroad Company."*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That J. H. Todman, R. R. Moss, C. W. Newman, Wm. Arrington, Hiram Bacon, Joseph Trench, John A. Hobart, Frank Drake, Wm. Hayes, Wm. Gregory, J. P. Foulks, and associates and assigns, are hereby created a body corporate, by and under the name of "The Virginia, Carson, and Truckee Railroad Company," and that they shall have the right to lay out, construct, maintain, and operate, a single or double track railroad in this territory, beginning at, or near, the town of Gold Hill, and to run thence, by the most practicable route, to or near a point between the New York House and Half Way House, on the Virginia City and Carson City road, with the right and privilege of building a branch railroad from said point, along the most practicable route, near the Carson River, to, or near, Chinatown, or Dayton; thence, from said point, between said New York House and Half Way House, by the most practicable route, to or near Carson City; thence, northwardly, through or near the intervening valleys, etc., to the Truckee River, at such point, on or near said river, as may be selected by said company. Such corporation, or company, shall also have the right of extending their said road west, and up the said Truckee River, to the boundary line between this territory and the state of California; also, shall have the right to extend their said road from Gold Hill to Virginia City; also, shall have the right to extend the before mentioned branch of their road from Chinatown, or Dayton, down the said Carson River, a distance of ten miles.

SEC. 2. The persons herein before named, and hereby incorporated as aforesaid, and such corporation, shall have the right and privilege aforesaid of operating and maintaining the said railroad for twenty-five years, and also the right of succession, by and under said corporate name, for and during that period. They are also hereby made capable, in law, by and under their said name of "The Virginia, Carson, and Truckee Railroad Company," of purchasing, holding, and conveying lands, tenements, and hereditaments, to the extent required by the necessities of their said railroad, and are empowered to grant, lease, or in any-wise dispose of the same; to contract and be contracted with, to sue and be sued in any court of this territory, and to make and use a common seal, and alter the same at pleasure.

SEC. 3. And said corporation shall have further power, to wit: First. To fix, and name, and establish, the amount of

Corporators.

Style of corporation.

Franchise.

Term of franchise.

Powers of.

Stock and shares.

Officers.

By-laws.

Survey and
selection of
route.To receive
and convey
property.

To intersect.

Transport'n
of persons
and property

Speed.

their capital stock, and the number and value of the shares thereof, and to alter the same. . Second. To appoint such directors, trustees, and other officers and agents, as the business of said corporation shall require; to define their duties and liabilities, and to allow them suitable compensation. Third. To make by-laws and orders, not inconsistent or in conflict with the laws of this territory, for the management of its property, the government and regulation of its affairs, and the transfer of its stock; and such by-laws and orders, when so made, shall be binding upon the members of said company.

SEC. 4. Said persons herein before named, or said corporation, shall cause such examination and surveys of said railroad to be made, as may be necessary for the selection of the most practicable and advantageous route for the same, as designated in the first section of this act, and may adopt such route as shall be found by them to be most practicable and eligible for that purpose; and by their officers, employes, and agents, are empowered to enter upon the land or waters of the public domain, or of any private person, in carrying out the provisions of this act, under the provisions and restrictions hereinafter named.

SEC. 5. Said corporation is also hereby empowered to receive, hold, take and convey, by deed or otherwise, the same as a natural person might or could do, such voluntary grants and donations of real estate, and other property of every description, as shall be made to them, to aid and encourage the construction, operation, and maintenance of their said road; also, to purchase lands, to purchase timber, stone, gravel and other material to be used in the construction of its road, depots, shops, and other buildings necessary; also, to cross, intersect, join, and unite its railroad with any other railroad, either before or after constructed, at any point upon its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings, switches, and other conveniences, in furtherance of the objects of such connections; also, to construct their said railroad along, or upon, any stream of water, street, road, avenue, or highway, or across any railway, canal, ditch, or flume, which the route of the same shall intersect, cross, or run along, in such manner as to afford security to life and property.

SEC. 6. Said corporation is further empowered to take, transport, and carry persons and property, or freight, on their said railroad, by the force and power of steam, of animals, or other power, or by any combination of the same; also, to collect and receive tolls and compensation therefor; also, regulate the time and manner in which passengers and property shall be transported over or upon their said road, and the tolls and compensation to be paid therefor, and to make all needful and proper rules and regulations for the management of their business, the working of their road, and the regulation and speed

of the locomotives, trains, and other machinery connected with the same. Said corporation shall start and run their cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting, and at the junctions of other railroads, and at stopping-places established for receiving and discharging way passengers and freight, and shall take, transport, and discharge such passengers and property at, from and to such places, on the due payment of freight and fare established and authorized by said company, or directors thereof; and if any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train, and the employés of the corporation, to put him out of the cars at any stopping-place the conductor shall select.

Trains and
accommoda-
tion.

Refusal to
pay fare.

SEC. 7. The persons herein before mentioned, or said corporation, shall have the right of way, two hundred (200) feet in width, upon or over any lands in this territory, upon which to survey, and build, and lay down their said railroad; also, shall have sufficient space, or room, upon such lands, for turn-outs, sites for buildings, conduits, and tanks; also, sites for machine and other shops, depots, and store-houses, and such lateral tracks as may be required for the same. And the said company shall have the right to enter upon all such lands, and to take and hold the same, whenever it may become necessary for them so to do; also, to enter upon any land adjoining said railroad, or near the same, and obtain therefrom sand, gravel, stone, timber, and other materials, such as may be necessary for the construction of said road. Whenever the same, or any lands, or water, may be required by said company, for their use, in the construction, as aforesaid, of their said road, and the same shall belong to individuals, or companies, and shall not be donated, or granted, to said company, the compensation to be paid therefor shall be determined as follows: Said company shall apply to one of the district judges of this territory, for the appointment of three commissioners, whose duty it shall be, as soon as practicable after they shall have been appointed, to proceed to assess the damages which may be sustained by the several owners of the land through which the road of said company is located; and said commissioners, in assessing such damages, shall deduct therefrom the benefit, or value, which said land may receive in consequence of the construction of said railroad through or near the same. The said company shall give thirty days' notice of their application for the appraisement by said commissioners, in one or more newspapers, published in each of the counties through which said road may run; and when no newspaper is published in any one of said counties, then the said notice shall be posted, the same length of time, in three public places in the said

Extent of
grant.

To enter on
lands.

Appraisem't
of damages
by comm'rs.

Notice of.

county. And the said commissioners shall cause ten (10) days' notice to be given of their meeting, to make such appraisement of damages sustained by persons through whose lands such road shall pass, by publication or otherwise, to the owner or owners thereof. And if said owner or owners of the same, shall be a minor or insane person, such notice shall be given to their guardian or guardians. Either party feeling aggrieved by the decision of said commissioners, may appeal to the district court of the district in which said land may be situated. And said appeal shall be tried in the same manner as if commenced therein; *provided*, said company shall not in any way or manner be delayed in the construction of said road, by such appeal, but may proceed, without detention or delay, with such construction, upon paying into the office of the clerk of said court, the amount of money awarded to the owner or owners of said land, and filing a bond with the said clerk, to said owner or owners, binding said company to pay such sum of money as may be finally awarded against them the said company.

SEC. 8. Said company, or corporation, is hereby authorized to borrow money whenever it may become necessary so to do, in order to construct, complete, or operate the said road, and may dispose of its bonds for that purpose; also, to mortgage its corporate property, to secure the payment of debts and liabilities contracted by said company, for the purpose aforesaid. The stock of the said company shall be deemed and held to be personal property, and may be transferable, as shall be subscribed [prescribed] by the by-laws of the company.

SEC. 9. If any person shall, willfully and maliciously, obstruct, or injure, the said railroad of said company, or anything belonging thereto, or any of the property, of any description, belonging to said company, and appertaining to said road, such person shall be deemed guilty of a misdemeanor, and shall be punished accordingly; and for every such offense, shall also be liable to said company for double the amount of damage it shall suffer thereby; the same to be recovered by said company by civil action in any court having jurisdiction thereof.

SEC. 10. The said company shall complete the building and laying down of said road, from the initial point of the same to Carson City, and, also, the branch of said road to Chinatown, or Dayton, and place the same in good working condition, within two years and six months from the passage of this act; said company shall, also, complete the building and laying down of said road from Carson City to the Truckee River, within two years from and after the expiration of said two years and six months; and in failing so to do, this act shall be null and void. No other railroad shall be hereafter constructed, built or laid down, under authority from the legislature of this territory, or otherwise, to run between any of the points of the route hereby granted and named in the first section of this act,

To be
published.

Appeal.

Construction
not to be
delayed.

May borrow
money.

Injury to
road.

Penalty.

Completion
of road.

Exclusive
right.

for and during the period of the duration of the charter of the said company or corporation named in the second section of this act; *provided*, the said company or corporation shall organize, complete its surveys, and also three miles of their said road, placing the same in good working condition, within eighteen months from the passage of this act, and also fully comply with the other requirements of this section. Proviso.

SEC. 11. This act is hereby declared to be a public act, and shall be favorably construed in all the courts of this territory, and may be hereafter amended in any manner not impairing the vested rights of said company. How construed.

CHAP. LIII.—*An Act to provide for the Appointment of Notaries Public.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. There shall be as many notaries public appointed by the governor, for the several counties, as he shall deem expedient, and they shall be severally commissioned and entered thereon, according to law. How appointed.

SEC. 2. Notaries public are hereby authorized, within their respective counties, to act, transact, do and finish all matters and things relating to protests, and protesting bills of exchange, and promissory notes, and all other matters within their office required by law, to take depositions as prescribed by law, and acknowledgments of deeds and other instruments, and to administer oaths. Powers of.

SEC. 3. On the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the clerk of the district court for the county in which the said notary public resided. Death, or resignation.

SEC. 4. If any notary public, on his resignation or removal from office, shall, for the space of three months, neglect to deposit his records and official papers in the clerk's office, he shall forfeit a sum not exceeding five hundred dollars. Papers and records, to be deposited.

SEC. 5. Every notary public, before he enters upon the duties of his office, shall provide an official seal, and deposit an impression of the same, together with his official oath and bond, in the office of the secretary of the territory. Official seal.

CHAP. LIV.—*An Act to provide Compensation for the Supreme Judges of the Territory, for the Transaction of Territorial business.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. There shall be taxed and collected, on the commencement of each civil action, or proceeding in the nature of action, in the district court, and on each appeal or writ of error had to or from said court, the sum of five dollars, which shall be termed a docket fee, which shall be collected by the clerk, and such clerk, at the end of each quarter, shall report to the territorial auditor the amount so collected, and pay the same over to the territorial treasurer; and the auditor, upon the receipt of such report, shall divide the same into three equal parts among the judges, and draw a warrant on the territorial treasurer in favor of each associate justice, and chief justice of the supreme court, for his proportion thereof.

SEC. 2. It is hereby made the duty of the territorial treasurer, to pay such warrants as may be drawn under the provisions of this act, out of any moneys which may be paid into the territorial treasury.

SEC. 3. All acts, or parts of acts, in violation of the provisions of this act, are hereby repealed.

CHAP. LV.—*An Act to regulate the Settlement of the Estates of Deceased Persons.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

I.—JURISDICTION.

SECTION 1. Wills shall be proved, and letters testamentary, or of administration, shall be granted; First. In the county of which the deceased was a resident, at or immediately previous to his death, in whatever place his death may have happened. Second. In the county [in] which he may have died, leaving estate therein, and not being a resident of the territory. Third. In the county in which any part of his estate may be, he having died out of the territory, and not being a resident thereof, at the time of his death. Fourth. In the county in which any part of his estate may be, he not being a resident of the

territory, and not leaving estate in the county in which he died. Fifth. In all other cases, in the county where application shall first be made.

SEC. 2. When the estate of the deceased is in more than one county, he having died out of the territory, and not having been a resident thereof at the time of his death, or, being such non-resident, and dying within the territory, and not leaving estate in the county where he died, the probate court of that county, in which application is first made for letters testamentary, or of administration, shall have exclusive jurisdiction of the settlement of the estate. Jurisdiction of estate of non-resident.

II.—PROOF OF WILLS.

SEC. 3. Any person, having the custody of any will, shall, within thirty days after he shall have knowledge of the death of the testator, deliver it into the probate court which has jurisdiction of the case, or to the person named in the will as executor. Wills to be delivered to probate court.

SEC. 4. Any person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, present the will, if in his possession, to the probate court. Same.

SEC. 5. If he intends to decline the trust, he shall, at the same time, file his renunciation in writing. If he shall neglect, for ten days, to file his renunciation, such neglect shall be equivalent to a renunciation, unless, for cause shown, the probate court, or judge, shall extend the time. If he intends to accept, he shall present, with the will, a petition setting forth the facts necessary to give jurisdiction, and, when the same are known, the names, ages, and residence of the heirs and devisees of the deceased, and the probable value and character of the property of the estate, and praying that the will be admitted to probate, and that letters testamentary be issued to him. If the jurisdictional facts existed, but are not fully set forth in the petition, and the same shall be afterwards proved, in the course of the administration, the probate of the will, and the subsequent proceedings, shall not, on account of such want of jurisdictional averments, be held void. Petition of executor.

SEC. 6. Every person who shall neglect to perform any of the duties required in the preceding sections, without reasonable cause, shall be liable to every person interested in the will, for the damages they may sustain in consequence of such neglect. Liability for neglect.

SEC. 7. Any person named as executor in a will, though the will is not in his possession, may present his petition to the probate court which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary may be issued to him. Petition for probate.

SEC. 8. Any person having an interest in the will, may, Same.

in like manner, present a petition, praying that it may be required to be produced, and admitted to probate.

Order for
production
of will.

SEC. 9. If it be alleged, in any petition, that any will is in the possession of a third person, and the court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will, requiring him to produce it at a time to be named in the order.

Penalty for
disobeying.

SEC. 10. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he shall produce the will.

Application
for probate,
when made.

SEC. 11. Applications for the probate of a will, and for the issuance of letters, may be made to the probate judge out of term time, or at chambers; and he may also, out of term time, or at chambers, issue all necessary orders and writs to enforce the production of any will. He may also appoint a special term for the hearing of any such application.

Time for
proving will.

SEC. 12. When any will shall have come into the possession of the probate court, and a petition for the probate thereof, and for the issuance of letters testamentary, or letters of administration, with the will annexed, shall have been filed, the court, or judge, shall appoint a time for proving it, which shall not be less than ten, nor more than thirty days, and shall cause notice to be given thereof by the clerk, by publication in some newspaper, if there is one printed in the county, if not, then by notices posted in three public places in the county.

Citations.

SEC. 13. If the heirs of the testator reside in the county, the court shall also direct citations to be issued and served upon them, to appear and contest the probate of the will at the time appointed.

Same.

SEC. 14. If the will is presented by any other person than the one named as executor, or if it is presented by one of several persons named as executors in the will, citations shall also be issued and served upon such person or persons, if resident within the county.

Subpenas for
witnesses.

SEC. 15. The court shall also direct subpenas to be issued to the subscribing witnesses to the will, if they reside in the county.

Hearing to
prove will.

SEC. 16. At the time appointed, or at any time to which the hearing may be continued, upon proof being made, by affidavit, or otherwise, to the satisfaction of the court, that notice has been given, as required in the preceding sections, the court shall proceed to hear the testimony in proof of the will.

Who may
contest.

SEC. 17. Any person interested may appear and contest the will. If it appears that there are minors, or persons residing out of the county, who are interested in the estate, the court shall appoint some attorney to represent them.

SEC. 18. If no person shall appear, to contest the probate

of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed, in all particulars, as required by law, and that the testator was of sound mind at the time of its execution.

Probate,
when not
contested.

SEC. 19. If any person appears and contests a will, he shall file a statement, in writing, of the grounds of his opposition; when any issue or issues of fact shall be joined in the probate court, respecting the competency of the deceased to make a last will and testament, or respecting the execution by the deceased, of such last will and testament, under restraint or undue influence, or fraudulent representations, or for any other cause affecting the validity of such will, the court shall proceed to try and determine such issue or issues of fact, and shall be governed therein by the same rules as are provided by law for the trial of issues of fact in the district courts of the territory; *provided*, however, that no trial by jury, of such issue or issues of fact, shall be allowed in said court. Issues of fact shall be deemed joined, by the filing of the grounds of opposition with the clerk of the probate court.

Contest, and
proceedings
thereon.

SEC. 20. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence, or insanity of any of them, shall be satisfactorily shown to the court.

Subscribing
witnesses to
be examined

SEC. 21. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator, and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator, and of the subscribing witnesses, or any of them.

Witnesses
residing out
of county.

SEC. 22. The testimony of each witness shall be reduced to writing, and signed by him, and shall be deemed good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from this territory.

Testimony to
be written.

SEC. 23. If the court shall be satisfied, upon the proof taken, and from the facts found by it, or by the jury, that the will was duly executed, and that the testator, at the time of the execution, was of sound and disposing mind, and not under restraint, undue influence, or fraudulent [misrepresentations], a certificate of the proof and the facts found, signed by the probate judge, and attested by the clerk, with the seal of the court, shall be attached to the will.

Certificate of
proof.

SEC. 24. The will, and the certificate of the proof thereof, together with the testimony which has been taken, shall be filed by the clerk, and recorded by him in a book to be provided for the purpose.

Will and
certificate
to be filed.

SEC. 25. The record of the will, and the exemplification by the clerk in whose custody it may be, shall be received in

Record to be
evidence.

evidence, and be as effectual in all cases as the original would be if proved.

Wills proved
in other
states.

SEC. 26. All wills which shall have been duly proved, and allowed in any other of the United States, or in any foreign country or state, may be allowed, and recorded in the probate court of any county in which the testator shall have left any estate; *provided*, it has been executed in conformity with the laws of this territory.

Probate of
copy of will.

SEC. 27. When a copy of the will, and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same shall be filed in court, and the court or judge shall appoint a time of hearing, and notice shall be given in the same manner as in the case of an original will for probate.

Same.

SEC. 28. If, on hearing, it shall appear to the court, that the instrument ought to be allowed, as the will of the deceased, the authenticated copy shall be admitted to probate, and recorded, the same as in case of other wills, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Same.

SEC. 29. If, on hearing, it shall appear to the court, that the instrument ought to be allowed as the will of the deceased, a copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Contesting
will after
probate.

SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same, or the validity of the will. For that purpose, he shall file in the court before which the will was proved, a petition in writing, containing his allegations against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

Same.

SEC. 31. Upon the filing of the petition, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators, with the will annexed, and to all the legatees named in the will, residing in the state, or to their guardians, if any of them are minors, or their personal representatives, if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

Hearing
proof.

SEC. 32. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citations having been made upon any person named therein, the court shall proceed to hear the proofs of the parties. If any devisees or legatees named in the will, shall be minors, and have no guardians, the court shall appoint some attorney to represent them.

Revoking
probate.

SEC. 33. If, upon the hearing of the proofs of the parties, the court shall decide that the will is, for any reason, invalid,

or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked.

SEC. 34. Upon the revocation being made, the powers of the executor or administrator, with the will annexed, shall cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation. Effect of revocation.

SEC. 35. The fees and expenses shall be paid by the party contesting the validity of the will, or the probate, if the will or probate be confirmed. If the probate be revoked, the party who shall have resisted the revocation shall pay the costs and expenses of the proceedings, or the same shall be paid out of the property of the deceased, as the court shall direct. Fees and costs.

SEC. 36. If no person shall, within one year after the probate, contest the same, or the validity of the will, the probate of the will shall be conclusive; saving, to infants, married women, and persons of unsound mind, a like period of one year after their respective disabilities are removed. Probate, when conclusive.

SEC. 37. Whenever any will shall be lost or destroyed, by accident or design, the probate court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to all persons interested having been first given, as prescribed in regard to proofs of wills in other cases. All the testimony given shall be reduced to writing, and signed by the witnesses. Lost wills.

SEC. 38. No will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses. How proved.

SEC. 39. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the probate judge, under his hand and the seal of his court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary, or of administration, with the will annexed, shall be issued thereon, in the same manner as upon wills produced and duly proved. Certificate of proof of lost will.

SEC. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator, be granted, the court shall have authority to restrain the administrators or executors so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will. Restraining execu'rs and administ'rs.

III.—LETTERS TESTAMENTARY AND OF ADMINISTRATION, AND BONDS OF EXECUTORS AND ADMINISTRATORS.

SEC. 41. When any will shall have been proved and allowed,

Letters, etc.,
to be issued. the probate court shall issue letters thereon to the persons named in the will as executors, who are competent to discharge the trust, and who shall appear and qualify.

Executor,
who compe-
tent. SEC. 42. No person shall be deemed competent to serve as executor, who, at the time the will is proved, shall be—First. Under the age of majority; or, Second. Who shall have been convicted of an infamous crime; or, Third. Who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding. If any such person be named as the sole executor, in any will, or if [all] the persons named as executors are incompetent, or shall renounce, or fail for letters, or to appear and qualify, letters of administration, with the will annexed, shall not be issued.

Letters, etc.,
with will.

Objections to
executor. SEC. 43. Any person interested in a will, may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objections shall be heard and determined by the court; a petition may also be filed for the issuance of letters of administration, with the will annexed.

Executrix,
unmarried.

SEC. 44. When an unmarried woman, who shall have been appointed executrix, shall marry, her marriage shall extinguish her authority. When a married woman is nominated as executrix, she may be appointed, and serve, in every respect, as if she were a *femme sole*.

Executor of
executor.

SEC. 45. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator, left unadministered, shall be issued.

Letters when
executor
named is a
minor.

SEC. 46. When a person under the age of twenty-one years, shall be named executor, letters of administration, with the will annexed, shall be granted during the minority of the executor, unless there is another executor who shall accept the trust and qualify, in which case the executor who shall accept the trust and qualify, shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor.

Powers of
executor.

SEC. 47. When all the executors named shall not be appointed by the court, such as are appointed shall have the same authority to perform every act and discharge every trust required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together.

Two exec'rs.

When there are two executors or administrators, the acts of one alone shall be effectual, if the other is absent from the territory, or for any cause is laboring under any legal disability from serving, as if he should have given his co-executor, or co-administrator, authority, under seal, to act alone or for both; and when there are more than two executors, the act of a majority shall be sufficient.

SEC. 48. Administrators, with the will annexed, shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

Powers of
administ'r,
with will
annexed.

SEC. 49. Letters testamentary and of administration, with the will annexed, shall be signed by the clerk, and be under the seal of the court.

SEC. 50. Letters testamentary may be in substantially the following form: "The Territory of Nevada, county _____. The last will of A. B. deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of _____, C. D., who is named therein, is hereby appointed executor. Witness, G. H., clerk of the probate court of the county of _____, with the seal of the court affixed, the _____ day of _____ A. D. 18— (seal). By order of the court, G. H., clerk."

Form of
letters testa-
mentary.

SEC. 51. Letters of administration, with the will annexed, may be substantially in the following form: "The Territory of Nevada, county of _____. The last will of A. B. deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of _____, and there being no executor named in the will (or, as the case may be), C. D. is hereby appointed as administrator, with the will annexed. Witness, G. H., clerk of the probate court of the county of _____, with the seal of the court affixed, the _____ day of _____, A. D. 18— (seal). By order of the court, G. H., clerk."

Form of
letters of ad-
ministration
with will
annexed.

SEC. 52. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be, respectively, entitled in the following order: First. The surviving husband or wife, or some person, as he or she may request, to have appointed. Second. The children. Third. The father or mother. Fourth. The brothers. Fifth. The sisters. Sixth. The grandchildren. Seventh. Any other of the kindred entitled to share in the distribution of the estate. Eighth. The creditors. Ninth. Any of the kindred, not above enumerated, within the fourth degree of consanguinity. Tenth. The public administrator. Eleventh. Any person or persons legally competent; *provided*, that when there was any partnership existing between the intestate, at the time of his death, and any other person, the surviving partner shall in no case be appointed administrator of the estate of such intestate.

Estates
intestate.

Who entitled
to.

SEC. 53. When there shall be several persons claiming and equally entitled to the administration, males shall be preferred to females, and relatives of the whole blood to those of the half blood.

Who to have
preference.

SEC. 54. When there are several persons equally entitled to the administration, the court may, in its discretion, grant letters to one or more of them.

Discretion in
court.

SEC. 55. No person shall be entitled to letters of adminis-

Administ'r, who may act as.	tration, who shall be—First. Under the age of majority; or, Second. Who shall have been convicted of an infamous crime; or, Third. Who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust, by reason of drunkenness, improvidence, or want of integrity or understanding.
Administ'r unmarried.	SEC. 56. When any unmarried woman, who shall have been appointed administratrix, shall marry, her marriage shall extinguish her authority.
Minor administ'r.	SEC. 57. If any person entitled to administration shall be a minor, administration shall be granted to his or her guardian.
Letters of administra- tion, how applied for.	SEC. 58. Application for letters of administration shall be made by petition, in writing, signed by the applicant or his counsel, and filed by the clerk of the court. The petition must state the facts essential to give the court jurisdiction of the case, and when the name is known to the administrator, he shall state the names, ages and residence of the heirs of the deceased, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and the same shall be afterwards proved in the course of the administration, the decree of administration, and the subsequent proceedings, shall not, on account of such want of jurisdictional averment, be held void.
When granted.	SEC. 59. Letters of administration shall be granted at a regular term of the court, or at chambers at a special term appointed by the judge for the hearing of the application.
Notice of application.	SEC. 60. When any petition praying for letters of administration, has been filed, the clerk shall give notice thereof, by causing notices to be posted up in at least three public places in the county, one of which shall be at the place where the court is held. The notice shall state the name of the deceased, the name of the applicant, and the term of the court at which the application will be heard. Such notice shall be given at least ten days before the hearing.
Who may contest.	SEC. 61. Any person interested may contest the application, by filing a written opposition thereto, on the ground of the incompetency of the applicant, or may assert his own rights to the administration, and pray that letters be issued to himself, after proper petition filed, and due notice given.
Hearing.	SEC. 62. On the hearing, it being first proved that notice has been given according to law, the court shall proceed to hear the allegations and proof of the parties, and to order the issuance of letters of administration, as the case may require.
Evidence of notice.	SEC. 63. An entry in the minutes of the court that proof was made, that notice had been given, according to law, shall be conclusive evidence of the fact of such notice.
When letters of adminis- tration may be granted.	SEC. 64. Letters of administration may be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuance of letters to themselves.

SEC. 65. Before letters of administration shall be granted on the estate of any person who is represented to have died intestate, the fact of his having died intestate shall be proved by the testimony of the applicant, and the court may also examine any other person concerning the time, place, and manner of the death, the place of his residence at the time of his death, the value and character of his property, and whether or not the deceased left any will, and may compel any person to attend as a witness for that purpose.

Proof of
death
intestate.

SEC. 66. Administration may be granted to one or more competent persons, although not entitled to the same, at the request of the person entitled to be joined with such person. The request shall be in writing, and shall be filed in the court. When the person entitled is a non-resident of the territory, affidavits, or depositions, taken *ex parte* before any officer authorized by the laws of the territory or state where the same are taken, to take acknowledgments and administer oaths, may be received as *prima facie* evidence of the identity of the party, if free from reasonable suspicion, and the fact be established to the satisfaction of the court.

How admin-
istra'n may
be granted
to one or
more.

SEC. 67. When letters of administration have been granted to any other person than the surviving husband or wife, the child, the father, mother, or the brother of the intestate, any one of them may obtain the revocation of the letters by presenting to the probate court a petition praying the revocation, and that letters of administration be issued to him or her.

Petition for
revocation.

SEC. 68. When any such petition is filed, the clerk shall issue a citation to the administrator, to appear and answer the petition at the next regular term of the court, or at any special term that may be appointed by the judge.

Citation and
answer.

SEC. 69. At the time appointed, the citation having been duly served and returned, the court shall proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he or she be competent, letters of administration shall be granted to the applicant, and the letters of the former administrator be revoked.

Hearing.

SEC. 70. The surviving husband or wife, when letters of administration have been granted to a child, to the father, or to a brother of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his or her prior right, and obtain letters of administration, and have the letters before granted revoked, in the manner prescribed in the three preceding sections.

Survivors
may obtain.

SEC. 71. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be in substantially the following form:

"Territory of Nevada, county of _____. C D is hereby appointed administrator of the estate of A B, deceased. (Seal.)
Witness, G H, clerk of the probate court of the county of _____"

Form of
letters of
administ'n.

_____, with the seal of the court affixed, the — day of _____, A. D. 18—. By order of the court. G H, Clerk."

Oath of
administ'r
and exec'r.

Letters,
etc., to be
recorded.

Bond of ad-
ministrators
and exec'rs.

Additional
bond.

Separate
bonds.

Suit on bond

Sureties to
justify.

SEC. 72. Before letters testamentary or of administration shall be issued to the executor or administrator, he shall take and subscribe an oath or affirmation, before the probate judge, or clerk, that he will perform, according to law, the duties of executor or administrator; said oath shall be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by, executors, or administrators, with the affidavits and certificates thereon, as provided for in this act, shall be forthwith recorded, by the clerk of the court having jurisdiction of the estates, respectively, in a book to be kept by him in his office for that purpose, and the said records and duly certified copies taken therefrom, shall have the same force and effect, in all cases whatsoever, as the original papers would have.

SEC. 73. Every person to whom letters testamentary or of administration, shall have been directed to issue, shall, before receiving the letters, execute a bond to the people of the territory of Nevada, with two or more sufficient sureties, to be approved by the probate judge. In form, the bond shall be joint and several, and the penalty shall not be less than twice the value of the personal property belonging to the estate, which value shall be ascertained by the probate judge, by the examination on oath of the party applying, and of any other persons he may think proper to examine. The probate judge shall require an additional bond, whenever the sale of any real estate, belonging to an estate, is ordered by him. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. He shall also require bond and sufficient surety for the annual rents, issues and profits of all real estate in his charge, as such executor or administrator, to be approved by the probate judge.

SEC. 74. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

SEC. 75. The bond shall not be void upon the first recovery, but may be sued upon, from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

SEC. 76. In all cases where bonds are required by this act, the sureties must justify, on oath, before the judge or clerk of some court having a seal, to the effect that they are householders, or freeholders, resident within this territory, and worth the amount justified to, over and above their debts and liabilities, exclusive of property exempt from execution; such justification shall be in writing, signed by the person justifying, and certified to by the judge or clerk who takes the same, and attached to, and filed with the bond.

Whenever the penal sum of the bond amounts to more than two thousand dollars, the sureties may be allowed to become liable for portions of said penal sum, making in the aggregate the whole penal sum of such bond.

SEC. 77. Before the probate judge approves any bond required by said act, he may, of his own motion, or at any time after the approval of such bond, upon the motion of any person interested in said estate, supported by affidavit that any one or all of such securities are not worth as much as they have justified to, order a citation to issue, requiring such security or securities to appear before him, at a particular time and place, to testify touching his or their property, and its value; and the judge shall, at the time such citation is issued, cause a notice to be issued to the executor or administrator, and requiring his appearance at the return of the citation. Upon the return of the citation, the judge may swear the securities and such witnesses as may be produced touching the property of such securities and its value; and if, upon such investigation, the judge is satisfied that the bond is insufficient, he may require sufficient additional security, within such time as may be reasonable, not less than five days.

SEC. 78. If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, shall be appointed to the administration.

SEC. 79. When it is expressly provided, in the will of a testator, that no bond shall be required of the executor, letters testamentary may issue without any bond having been given; but an executor, to whom letters have been issued without bond, may, at any time afterwards, whenever it may be shown from any cause to be necessary or proper, be required to appear and file a bond, as in other cases.

SEC. 80. Whenever any person interested in any estate, shall discover that the sureties of any executor or administrator have become, or are becoming insolvent, that they have removed, or are about to remove from the territory, or that, from any other cause, the bond is insufficient, he may apply, by petition, to the probate judge, and require that further security be given.

SEC. 81. If the probate judge shall be satisfied that the matter requires investigation, a citation shall be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally on the executor or administrator, at least five days before the return-day. If he shall have absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence.

SEC. 82. On the return of the citation, or at such other

time as the judge shall appoint, he shall proceed to hear the proofs and allegations of the parties. If it shall satisfactorily appear, that the security is, from any cause, insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time, not exceeding five days.

Letters may
be revoked.

SEC. 83. If the executor or administrator neglect to comply with the order, within the time prescribed, the judge shall, by order, revoke his letters, and his authority shall thereupon cease.

Suspending
powers of
executors.

SEC. 84. When a petition is presented, praying that an executor or administrator be required to give further security, and when it shall also be alleged, on oath or affirmation, that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

Further se-
curity with-
out applica'n

SEC. 85. When it shall come to his knowledge that the bond of any executor or administrator is, from any cause, insufficient, it shall be the duty of the probate judge, without any application, to cause him to be cited to appear and show cause why he should not give further security, and to proceed thereon, as upon the application of any person interested.

Sureties de-
siring to be
released.

SEC. 86. When either or all of the sureties of any executor, or administrator, shall desire to be released from responsibility, on account of his future acts, they may make application to the probate court or judge for relief, and the judge or court shall cause a citation to the executor or administrator to be issued and served, requiring him to appear, at a time and place to be therein specified, and to give other security, which citation shall be served personally.

Not liable.

SEC. 87. If new sureties be given to the satisfaction of the judge, he may, thereupon, make an order, that the surety or sureties who applied for relief, shall not be liable, on their bond, for any subsequent act, default, or misconduct of the executor or administrator.

Failure to
find new
sureties.

SEC. 88. If the executor or administrator neglect or refuse to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, not exceeding five days, unless the surety or sureties making the application shall consent to a longer extension of time, the court or judge shall, by order, revoke the letters granted.

Application,
when made.

SEC. 89. The applications, authorized by the nine preceding sections of this chapter, may be heard and determined out of term time. All orders made therein, shall be entered upon the minutes of the court.

Special
administ'r.

SEC. 90. When there shall be a delay in granting letters testamentary, or of administration, from any cause, or when such letters shall have been granted irregularly, or no sufficient bond shall have been filed, as required by law, or when

no application shall have been made for such letters, the probate judge shall appoint a special administrator to collect and take charge of the estate of the deceased, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate; or, he may direct the public administrator of his county to take charge of the estate.

SEC. 91. The appointment may be made out of term time, and without notice, and shall be made, by entry, upon the minutes of the court, which shall specify the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk shall issue letters of administration to such person, in conformity with the order. Who may be appointed.

SEC. 92. In making the appointment of a special administrator, the probate judge shall give preference to the person or persons entitled to letters testamentary, or of administration, but no appeal shall be allowed from the appointment. Who to have preference.

SEC. 93. Before any letters shall issue to any special administrator, he shall give bond in such sum as the probate judge may direct, with sureties, to the satisfaction of said judge, conditioned for the faithful performance of his duties. Bond of.

SEC. 94. The special administrator shall collect and preserve, for the executor or administrator, all the goods, chattels, and debts, of the deceased, all incomes, rents, issues and profits, claims, and demands, of the estate, shall take charge and management of, enter upon, and preserve from damage, waste and injury, the real estate; and for any such, and all necessary purposes, may commence and maintain, or defend, suits, and other legal proceedings, as an administrator. He may sell such perishable estate as the probate court may order to be sold, and may exercise such other powers as may have been conferred upon him by his appointment; but, in no case, shall he be liable to an action by any creditor, on any claim against the estate, nor pay any claim against the deceased. Powers and duties.

SEC. 95. When letters testamentary, or of administration, on the estate of the deceased, have been granted, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the property and effects of the deceased in his hands; and the executor or administrator may be permitted to prosecute to final judgment any suit commenced by the special administrator. Same.

SEC. 96. The special administrator shall also render an account, on oath, of his proceedings, in like manner as other administrators are required to do. Account and oath of.

SEC. 97. Whenever an executor or administrator shall die, or his letters be revoked, and the circumstances of the estate require the immediate appointment of an administrator, the probate judge may appoint a special administrator, as provided in the preceding sections. May be appointed in other cases.

Incompet'cy
of one exec'r
of several
to act.

SEC. 98. In case any one of several executors or administrators, to whom letters shall have been granted, shall die, become lunatic, be convicted of an infamous [offense] or otherwise become incapable of executing the trust, or in case the letters testamentary, or of administration, shall be revoked, or annulled, according to law, with respect to any one executor or administrator, the remaining executor or administrator shall proceed and complete the execution of the will or administration.

Incompeten-
cy of all the
executors.

SEC. 99. If all such executors or administrators shall die, or become incapable, or the power and authority of all of them shall be revoked according to law, the probate court shall issue letters of administration, with the will annexed, or otherwise, to the widow or next of kin, or others, in the same manner as is directed in relation to original letters of administration. The administrators so appointed shall give bond in the like penalty, with like sureties and conditions as herein before required of administrators, and shall have the like power and authority.

Proof of will
after grant-
ing letters,
etc.

SEC. 100. If, after granting letters of administration on the ground of intestacy, a will of the deceased shall be duly proved and allowed by the court, the letters of administration shall be revoked, and the power of the administrator shall cease, and he shall render an account of his administration within such time as the court shall direct.

Powers of
executors in
such cases.

SEC. 101. In such case, the executor of the will, or the administrator, with the will annexed, shall be entitled to demand, sue for, and collect all the rights, goods, chattels, and effects of the deceased, remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Resignation
of.

SEC. 102. Any executor or administrator may, at any time, by writing filed in the probate court, resign his appointment; *provided*, he shall first settle his accounts, and deliver up all the estate to such person as may be appointed by the court.

Acts of,
when not
valid.

SEC. 103. All acts of an executor or administrator, as such, before the revocation of his letters testamentary, or of administration, shall be as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Transcript
of court
minutes of
appointm't.

SEC. 104. A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk under his hand, and the seal of his court, that such person has given bond and been qualified, and that letters testamentary, or of administration, have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

Judge, when
not to act.

SEC. 105. No probate judge shall admit to probate any will, or grant letters testamentary, or of administration, in any case where he shall be interested as next of kin to the deceased, or as a legatee or devisee under the will, or where he shall be

named as executor or trustee in the will, or shall be a witness thereto.

SEC. 106. When any probate judge, who would otherwise be authorized to act, shall be precluded from acting, from the causes mentioned in the preceding section, or when he shall be in any manner interested, upon a representation, and due proof thereof, to the probate judge of an adjoining county, such judge shall be vested with all the powers and authority of the proper probate judge, in relation to the proof of any will, and the granting of letters testamentary, or of administration thereon, and the granting of letters of administration in cases of intestacy, and shall retain jurisdiction as to all subsequent proceedings in regard to the estate.

Judge of
adjoining
county,
when to act.

IV.—THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

SEC. 107. Every executor or administrator shall make, and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the deceased which shall have come to his possession or knowledge.

Inventory,
etc., to be
returned.

SEC. 108. For the purpose of making the appraisement, the court or judge shall appoint three disinterested persons, any two of whom may act, and who shall be entitled to receive a reasonable compensation for their services, to be allowed by the court; their compensation, as allowed, shall be in the form of a bill of items of their services, including all necessary disbursements, which shall be sworn to by them, and filed with the inventory, and which shall not exceed five dollars per day. If only one day's services are charged, the bill need not be sworn to. If any part of the estate shall be in any other county than that in which letters issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the case, or by the probate judge of such county.

Appraisem't,
how made.

SEC. 109. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly and impartially, appraise the property which shall be exhibited to them, according to the best of their knowledge and ability. They shall then proceed to estimate and appraise the property; each article shall be set down separately, with the value thereof, in dollars and cents, in figures opposite to the articles respectively. The inventory shall contain all the estate of the deceased, real and personal, a statement of all debts, partnerships and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraiser, may be collectable on each debt, interest, or security. The

Appraisers
to take oath.

inventory shall show, so far as the same can be ascertained by the executor, or the administrator, what portion of the property is community property, and what portion is the separate property of the deceased.

Inventory,
what to
contain.

SEC. 110. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the hands of the executor or administrator, and if more shall have come to his hands, the fact shall be so stated in the inventory.

Debtor as
executor,
effect of.

SEC. 111. The naming any person executor in a will, shall not operate as a discharge of any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same, as for so much money in his hands at the time the debt or demand becomes due.

Executor,
effect of
discharge of.

SEC. 112. The discharge or bequest, in a will, of any debt or demand of the testator, against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in the payment of his debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

Inventory to
be signed
and sworn
to, by whom.

SEC. 113. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe an oath, before the probate judge, or the clerk of the court, or any officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the deceased which has come to his knowledge and possession, and particularly of all money belonging to the deceased, and of all just claims of the deceased against the executor or administrator. The oath shall be indorsed upon, or annexed to, the inventory.

Inventory,
neglect to
return.

SEC. 114. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding two months, as the court or judge shall for reasonable cause allow, the court may, with or without further notice, revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate by his neglect.

Inventory
of, after
discovered
property.

SEC. 115. Whenever property not mentioned in any inventory that shall have been made, shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned within two months after the discovery thereof; and the making of such inventory may be enforced after notice by attachment or removal from office.

Executor,
etc. rights of.

SEC. 116. The executor or administrator shall have a right to the possession of all the real, as well as personal, estate of

the deceased, and may receive the rents and profits of the real estate, until the estate shall be settled, or until delivered over, by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings, and fences thereon, which are under his control.

SEC. 117. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits, in the hands of the executor or administrator, shall not be sufficient to pay the debts of deceased, and the expenses of administration, and the allowances to the family of the deceased, the whole of the real estate may be sold, for that purpose, by the executor or administrator, in the manner prescribed by this act.

Debts of estate, how paid.

SEC. 118. If any person, before the granting of letters testamentary [or] of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects, of any deceased person, he shall stand chargeable and be liable to the action of the executor or administrator of the estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Embezzling or aliening estate before granting letters.

SEC. 119. If any executor, or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge, on oath, that any person is suspected to have concealed, embezzled, conveyed away, or disposed of, any moneys, goods, or chattels of the deceased; or that he has in his possession, or knowledge, any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of, or tend to disclose the right, title, interest, or claim of the deceased, to any real or personal estate, or any claim or demand, or any last will of the deceased; the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined either before the probate court of the county where he may be found, or before the court issuing the order [or] citation. But if, in the latter case, he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

Proceedings on information of embezzlem't

SEC. 120. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him or her, touching the matter of such complaint, the court may, by warrant for that purpose, commit him or her to the county jail, there to remain in close custody until he or she shall submit to the order of the court, or be discharged according to law; and if, upon such examination, it shall appear that such person has concealed, embezzled, smuggled, conveyed away, or disposed of, any moneys, goods, or chattels, of the deceased, or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts, or other

Person refusing to appear when cited for exam'n.

writings, which contain evidences of, or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate, claim, or demand, or any last will of the deceased, the probate court may take an order requiring such person to disclose his knowledge thereof, to said administrator, and may commit said person to the county jail, there to remain until such order be complied with, or be discharged according to law; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court. The order for such disclosure, made upon such examination, shall be *prima facie* evidence of the right of such administrator to such property, in any action that may be brought for the recovery thereof; and any judgment recovered therein, shall be for the double value of the property, and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

Account,
person in-
trusted with
estate may
be cited.

SEC. 121. The probate judge, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

V.—PROVISION FOR THE SUPPORT OF THE FAMILY.

Family may
retain
homestead.

SEC. 122. When a person shall die, leaving a widow or a minor child or children, the widow, child, or children, shall, until letters have been granted, and the inventory has been returned, be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

Property
may be set
apart for.

SEC. 123. Upon the return of the inventory, or at any subsequent time during the administration, the court, or probate judge, may, of his own motion, or on application, set apart for the use of the family of the deceased, all personal property which is by law exempt from execution, and the homestead, as designated by the general homestead law, or by section one hundred and twenty-six (126) of this act.

Court to
make allow-
ance out of
estate.

SEC. 124. If the whole property exempt by law be not included in the inventory, and if the amount set apart be insufficient for the support of the widow and child, or children, the probate court shall make such reasonable allowance out of the

estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

SEC. 125. Any allowance made by the court, in accordance with the provisions of this chapter, shall be paid by the administrator in preference to all other charges, except funeral charges, and expenses of administration.

Allowance to have priority

SEC. 126. If there is no law in force exempting property from execution, the following shall be set apart for the use of the widow or minor child, or children, and shall not be subject to administration: First. All spinning wheels, weaving looms, and stoves put up or kept for use. Second. The family bible, family pictures, and school books and library, not exceeding in value two hundred dollars. Third. All sheep, to the number of twenty, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, with the necessary food for them for six months. Fourth. All wearing apparel of the widow and children, and all household goods, furniture, and utensils, not exceeding in value seven hundred and fifty dollars. Fifth. The homestead, consisting of any quantity of land, not exceeding twenty acres, and the dwelling-house thereon, with its appurtenances, not being included in any incorporated town or city; or, instead thereof, a quantity of land, not exceeding one lot in any incorporated town or city, and the dwelling-house thereon and its appurtenances, to be selected by the widow, or, if there be no widow, to be designated by the probate judge, and not to exceed, in any case, more than five thousand dollars in value.

Family, what property set apart for.

SEC. 127. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor child, such property shall be the property of the widow. If he shall have left, also, a minor child or children, the one half of such property shall belong to the widow, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow, the whole shall belong to the minor child or children.

Property set apart, how apportioned.

SEC. 128. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of five hundred dollars, the probate court shall, by a decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole of the estate, after the payment of the funeral charges and expenses of the administration, and there shall be no further proceedings in the administration, unless further estate be discovered; and, when it shall appear, that the value of the whole estate does not exceed the sum of one thou-

When entire estate to be set apart.

sand dollars, it shall be in the discretion of the probate court, to dispense with the regular proceedings, or any part thereof, prescribed in this act, for the purpose of a summary administration of the estate, and, to order distribution of the estate at the end of six months after the issuance of letters; *provided*, that notice to creditors shall have been given to present their claims within four months after the first publication of such notice.

When to go
to children.

SEC. 129. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the one hundred and twenty-fifth and one hundred and twenty-sixth sections of this act, the whole property so set apart shall go to the minor children.

VI.—OF CLAIMS AGAINST THE ESTATE.

Claims to be
advertised
for.

SEC. 130. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them, with the necessary vouchers, within ten months after the first publication of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge or court shall direct, but not less than once a week for four weeks. The court or judge may also direct additional notice by publication or posting. In case such executor or administrator resign, or be removed, before the expiration of ten months after the first publication of such notice, his successor shall give such notice only for the unexpired portion of the ten months. After the notice shall have been given, as required by the preceding section, a copy thereof, with the affidavit, or affidavits, of due application, or of publication and posting, may be filed; and upon such affidavit, or affidavits, or upon other testimony, to the satisfaction of the court, a decree shall be made showing that due and legal notice to the creditors has been given, and directing that such decree be entered in the minutes of the court.

Notice of
to be filed.

Claims
against
estate, when
barred.

SEC. 131. If a claim be not presented within ten months after the first publication of the notice, it shall be barred forever; *provided*, if it be not then due, or if it be contingent, it may be presented within ten months after it shall become due or absolute; and *provided*, further, that when it shall be made to appear, by the affidavit of the claimant, to the satisfaction of the executor or administrator, and the probate judge, that the claimant had no notice as provided in this act, by reason of absence from this territory, it may be presented at any time before a decree of distribution is entered.

SEC. 132. Every claim presented to the administrator, shall

be supported by the affidavit of the claimant that the amount ^{How supported.} is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant, or other affiant; *provided*, that when the affidavit is made by any other person than the claimant, he shall set forth in the affidavit the reasons it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers, or proofs, to be produced in support of the claim. The amount of interest shall be computed and included ^{Interest on.} in the statement of the claim, and the rate of interest determined; *provided*, that no claim, which shall have been due and payable thirty days prior to the death of the deceased, shall bear greater interest than ten per cent. per annum, from and after the time of issuing letters.

SEC. 133. Any probate judge may present a claim against the estate of any deceased person, for allowance, to the executor or administrator of such estate; and if the executor or administrator allows such claim, he shall, in writing, designate some probate judge of an adjoining county; and the probate judge, so designated by the executor or administrator, shall, upon the presentation of such claim to him, have the same power to allow or to reject it, as he would have if the will had been proved or administration granted in his own county; and the probate judge presenting such claim, shall, in case of its rejection by the executor or administrator, or by such probate judge as shall have acted upon it, have the same right to sue in a proper court for its recovery, as other persons have when their claims against an estate are rejected. ^{Probate judge may present claim.}

SEC. 134. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow this claim, it shall be presented to the probate judge for his approval, who shall in the same manner indorse upon it his allowance or rejection. If the executor or administrator, or the judge, refuse or neglect to indorse such allowance or rejection, ^{To be indorsed by executor.} for ten days after the claim shall have been presented to him, such refusal or neglect may be deemed equivalent to a rejection; and if a presentation be made by a notary, the certificate of such notary, under seal, shall be *prima facie* evidence of such presentment and rejection, and if made by any person other than the claimant, or notary, the affidavit of such person to the fact, shall be *prima facie* evidence of such presentment and rejection. ^{Rejection of claim, what considered.} If the claim be presented to the executor or administrator, before the expiration of the time limited for the presentation of claims, the same may be held valid, though acted upon by the executor or administrator, and by the judge after the expiration of such time.

SEC. 135. Every claim which has been allowed by the

Allowed to
be filed.

executor or administrator, and approved by the probate judge, shall, within thirty days thereafter, be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded on a bond, bill, note, or other instrument, the original instrument shall be presented, and the allowance and approval, or rejection, shall be indorsed thereon, or be attached thereto. If the claim, or any part thereof, be secured by a mortgage, or other lien, such mortgage or evidence of lien shall be attached to the claim and filed therewith, unless the same be recorded in the office of the recorder of the county in which the land lies, in which case, it shall be sufficient to describe the mortgage or lien, and refer to the date, volume and page of its record. And in all cases, it shall be permitted to the claimant to withdraw his claim from file, on leaving a certified copy, with a receipt indorsed thereon by himself or his agent. A brief description of every claim filed, shall be entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of approval; *provided*, if such original instrument be lost or destroyed, then, in lieu thereof, the claimant shall be required to file his affidavit, particularly describing such instrument, and stating the loss or destruction thereof, upon which affidavit the indorsement hereinafter mentioned shall be made.

To be
sued for.

SEC. 136. When a claim is rejected either by the executor or administrator, or the probate judge, the holder shall bring suit in the proper court against the executor or administrator, within three months after the date of its rejection, if it be then due, or within three months after it becomes due, otherwise the claim shall be forever barred.

Barred by
statute of
limitations.

SEC. 137. No claim shall be allowed by the executor or administrator, or by the probate judge, which is barred by the statute of limitations.

To be
presented
before suit.

SEC. 138. No holder of any claim against an estate, shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

Limitation of

SEC. 139. The time during which there shall be a vacancy in the administration, shall not be included in any limitations herein prescribed.

In action
pending.

SEC. 140. If an action be pending against the testator or intestate, at the time of his death, the plaintiff shall in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases, and no recovery shall be had in the action, unless proof be made of the presentments.

Allowance
in part.

SEC. 141. Whenever any claim shall be presented to any executor or administrator, or to the probate judge, and he shall be willing to allow the same in part, he shall state in his indorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim,

he shall recover no costs in any action which he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

SEC. 142. The effect of any judgment rendered against any executor or administrator, upon any claim for money against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator, and the probate judge, and the judgment shall be, that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court. No execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment. Effect of judgment.

SEC. 143. When any judgment has been rendered against the testator or intestate in his life, no execution shall issue thereon after his death; but a certified copy of such judgment shall be presented to the executor or administrator, and be allowed and filed, or rejected, as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration; *provided*, however, that if the execution shall have been actually levied upon any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands. The executor or administrator may, however, require the affidavit of the claimant, or other satisfactory proof, that the judgment or any portion thereof, is justly due, and unsatisfied. On judgment

SEC. 144. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant, to refer the matter in controversy to some disinterested person to be approved by the probate judge. Upon filing the agreement and approval of the probate judge, in the office of the clerk of the district court for the county in which the letters testamentary, or of administration, were granted, the clerk shall, either in vacation or in term, enter a minute of the order, referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had in the probate court, and the report of the referee, if confirmed, shall establish or reject the claim the same as if it had been allowed or rejected by the executor or administrator, and the probate judge. Reference of.

SEC. 145. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the court in which his appointment shall have been entered. The same proceedings shall be had in all respects. The referee shall have the same powers, be entitled to the same compensation, and subject to the same control as in other cases of reference. The court may set aside the referee, or appoint another in his Proceedings on reference.

place, or may set aside or confirm the report, and adjudge costs as in actions against executors and administrators, and the judgment of the court thereon shall be valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

Individual
liability of
executor or
administ'r,
for costs.

SEC. 146. When a judgment has been recovered with costs against any executor or administrator, the executor or administrator shall be individually liable for the costs, but they shall be allowed him in his administration accounts, unless it shall appear that the suit or proceeding, in which the costs were taxed, shall have been prosecuted or resisted without just cause.

Executor or
administ'r
as creditor.

SEC. 147. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness.

Notice to
creditors.

SEC. 148. If any executor or administrator shall neglect for two months after his appointment to give notice to creditors, as prescribed by this chapter, it shall be the duty of the court to revoke his letters.

Inventory of.

SEC. 149. At the same term at which he is required to return his inventory, the executor or administrator shall also return a statement of all claims against the estate, which shall have been presented to him, when required by the court, and from term to term thereafter shall present a statement of claims subsequently presented to him. In all such statements he shall designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

Sale of
property.

SEC. 150. No sale of any property of an estate of a deceased person shall be valid unless made under an order of the probate court, except as otherwise provided in this act or other acts.

Application
for.

SEC. 151. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file his written objections, which shall be heard and determined.

Sale of
perishable
property for
allowance to
family.

SEC. 152. At any time after receiving letters, the executor or administrator, or special administrator, may apply to the court or judge, for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased. If there be a delay in obtaining such order, such property may be sold without an order of sale; *provided*, that the executor, or administrator, or special administrator, shall be held responsible for such property, unless, after making a sworn return, and on a proper showing, the court shall approve such sale. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, the executor or administrator

may also apply for an order to sell so much of the personal property as shall be necessary. Upon filing his petition, notice of at least five days shall be given of the hearing of the application, either by posting notices, or by advertising. He may make a similar application, either in vacation or term, from time to time, so long as any personal property remains in his hands, and a sale thereof is necessary; and if he deem it for the best interest of the estate, he may, at any time after the filing of the inventory, make an application in like manner, and after giving like notice, for an order to sell the whole of the personal property belonging to the estate.

SEC. 153. If it appears that a sale is necessary, or for the best interest of the estate, the court or judge shall order it to be made. In making such sales, the court or judge shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specially bequeathed, to be first sold. Articles so bequeathed shall not be sold until the residue of the personal estate has been applied to the payment of the debts.

SEC. 154. The sale of personal property shall be made at public auction, and after public notice given for at least ten days, unless for good reason shown the court or probate judge shall order a private sale, or a shorter notice. Public sales of such property shall be made at the court-house door, at the residence of the deceased, or at some other public place to be mentioned in the notice; and no sale shall be made of any property which is not present at the time of selling.

SEC. 155. The notice shall be given by notices posted in three public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be specified the time and place of the sale.

SEC. 156. When the personal estate in the hands of the executor or administrator, shall be insufficient to pay the allowance to the family, the debts that may be outstanding against the deceased, and the debts, expenses, and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon order of the probate court.

SEC. 157. To obtain such order, he shall present a petition to the probate court, or to the judge at chambers, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of, the debts outstanding against the decease, as far as the same can be ascertained or estimated, the amount due upon the family allowance, or that will be due after the same shall have been in force for one year, the debts, expenses, and charges of the administration already accrued, and an estimate of what will or may accrue during the administration, a description of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the intestate [estate] has acquired any interest, and the condition and value of the respect-

Inventory,
appraisem't
of property.

ive portions and lots, and whether the same be community or separate property, the names and ages of the devisees, if any, and of the heirs of the deceased; which petition shall be verified by the oath of the party presenting the same. If the inventory and appraisement on file contain a full description of the personal estate of the deceased, and of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the estate had acquired any interest, such inventory, by a proper reference, may be made a part of the petition for a description of the personal estate, or real estate, or both; and if the same be full as to all property, except property subsequently discovered, or profits subsequently received, such reference may be had to the inventory, and the additional property may be set forth in the petition. If all the matters above enumerated cannot be ascertained, the same shall be so stated in the petition.

When order
of court not
required.

SEC. 158. If it shall appear to the court or judge, by such petition, that it is necessary to sell the whole or some portion of the real estate for the purposes mentioned in section one hundred and fifty-six of this act, or any or either of them, such petition shall be filed, and an order shall thereupon be made, directing all persons interested in the estate to appear before the court at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator, to sell so much of the real estate of the deceased as shall be necessary.

Order to be
served.

SEC. 159. A copy of such order to show cause, shall be personally served on all persons interested in the estate, at least five days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court or judge shall order; *provided*, however, if all persons interested in the estate, shall signify, in writing, their assent to such sale, the notice may be dispensed with.

Hearing of
application.

SEC. 160. The probate court, at the time and place appointed in such order, or at such other time as the hearing may be adjourned to, upon satisfactory proof of the due service or publication of a copy of the order, by affidavit, or otherwise, or upon filing the consent in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and, if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application.

Infant
devisees
of heirs.

SEC. 161. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, a copy of the order shall be served upon the guardian, at least ten days before the actual hearing. If they have no guardian, the court or judge shall, at the time of filing the petition, or before proceeding to act upon the petition, appoint some disinterested person their attorney, for the sole purpose of appearing for

them, and taking care of their interest in the proceedings. The court may also, upon the hearing, if it be deemed necessary, appoint such attorney for the heirs or devisees, if they are unrepresented, whether minors, or otherwise, and may likewise appoint an attorney for the creditors, if they are unrepresented. If such guardian of the minors, or such attorney for minors, or others, appear on the hearing, such appearance shall be evidence of service of notice upon such guardian or attorney.

SEC. 162. The executor or administrator may be examined on oath, and witnesses may be examined by either party, and process to compel their attendance and testimony may be issued by the probate judge, in the same manner and with like effect as in other causes. Witnesses.

SEC. 163. If it shall appear to the court that it is necessary to sell a part of the estate, real or personal, and that by a sale of such part the residue of the estate, or some specific part or piece thereof, would be greatly injured or diminished, or subject to expenses, or rendered unprofitable, the court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interests of all concerned. Order for sale of part of.

SEC. 164. If the court shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate, is necessary for any of the causes mentioned in sections one hundred and fifty-two and one hundred and fifty-six of this act, or if such sale be assented to by all the persons interested, an order of sale shall be made, authorizing the executor or administrator to sell the whole, or so much, and such parts of the real estate described in the petition, as the court shall judge necessary or beneficial. Order for sale of all.

SEC. 165. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash, or on a credit not exceeding one year, payable in gross or installments, with interest, as the court may direct. The tract or tracts of land may be sold in one parcel, or in subdivisions, as the executor or administrator shall judge most beneficial to said estate, unless the court shall otherwise specially direct. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the court shall order that part descended to heirs to be sold before that so devised. Every such sale shall be ordered to be made at public auction, unless, in the opinion of the court, it would benefit the said estate to sell the whole, or some part of such real estate at private sale, in which case the court, if the same is asked for in the petition, may order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for said estate. If the executor or administrator shall neglect or refuse to make a sale, under the order of Order, what to specify.
Sale at public auction.

sale, he may be compelled to proceed to sell by order of the court made on motion, after due notice, by any party interested.

Who may
apply for
order to sell.

SEC. 166. If the executor or administrator shall neglect to apply for an order of sale, whenever it may be necessary, any person interested in the estate may make application therefor, in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing. The petition of such applicant shall contain as many of the matters set forth in section one hundred and fifty-seven of this act as he can ascertain, and the decree of sale shall fix the period of time within which the executor or administrator shall make the sale.

Authority to
executor
to sell.

SEC. 167. Upon making such order mentioned in the last section, a certified copy of the order shall be delivered by the court, or the clerk, to the executor or administrator, who shall be thereupon authorized and required to sell the real estate as directed.

Notice of
sale.

SEC. 168. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty.

Time and
place.

SEC. 169. Such sale shall be made in the county where the land is situated, but when the tract of land is situated in two or more counties, it may be sold in either of said counties. The sale shall be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and shall be made at public auction, unless the court shall have ordered the real estate, or some part thereof, may be made either at public or private sale; but the same shall not be sold at private sale, until after notice of the time and place and terms of such sale shall have been given according to law, as in cases of sales at public auction; nor shall such sale, at private sale, be made, unless the real estate to be sold shall have been appraised within a year previous to the time of such sale; nor shall the same be sold at private sale for more than ten per cent. less than the appraised value thereof. If said real estate has not been so appraised, or if the court shall be satisfied that the appraisement is too high or too low, appraisers shall be appointed, and they shall make an appraisement thereof in the same manner as in the case of the appraisement of the inventory.

Private sale.

Sale on
credit.

SEC. 170. The executor or administrator shall, when the sale is made upon a credit, take the note or notes of the purchaser for the purchase money, with a mortgage on the property to secure their payments.

SEC. 171. The executor or administrator making any sale of any real estate, shall, at the next term of the court thereafter, after making any such sale, upon notice of at least ten days, to be given in such manner as the court or judge may direct, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale, and direct another to be had, of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place; *provided*, that if an offer of ten per cent., or more, exclusive of the expenses of a new sale, be made to the court in writing by a responsible person, it shall be in the discretion of the court to accept and confirm the sale to such person, or to order a new sale.

Resale, when
may be
ordered.

SEC. 172. When the return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation of the sale, and they may be heard on said first day of the term subsequent to the sale, or any subsequent day, to which the matter may be continued, or upon any day that may be fixed by the order of the court or judge, and may produce witnesses in support of his objections.

Objection to
confirmation
of.

SEC. 173. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified cannot be obtained, or if the advance bid mentioned in section one hundred and sixty-nine of this act, be made and accepted by the court, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale from that time shall be confirmed and valid, and a certified copy of the order authorizing the sale, and of the order confirming the same, and directing conveyances to be executed, shall be recorded in the office of the recorder of the county within which the land sold is situated; *provided*, that if, after such confirmation, the purchaser shall neglect or refuse to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a new sale of the property sold to such purchaser. If the amount realized on such re-sale do not cover the bid, and the expenses of the previous sale, such purchaser shall be liable for the deficiency.

Order
confirming
conveyances.

To be
recorded.

SEC. 174. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator. They shall refer to the orders of the probate court authorizing and confirming the sale of the property of the testator or intestate, and directing conveyances thereof to be executed, and to the record of such orders in the office of the county recorder, either

Form and
effect of
conveyance.

by the date of such recording, or by the date and volume and page of such record, and such reference shall have the same effect as if the said orders were at large inserted in the conveyance. The conveyances so made shall be deemed to convey all the right, title, interest and estate of the testator or intestate in the premises at the time of his death. When, however, by operation of law, or otherwise, the estate shall have acquired any right, title or interest, in the premises, other than, or in addition to that of the testator or intestate at the time of his death, such right, title or interest, shall also be passed by such conveyances.

Notice of
sale proved.

SEC. 175. Before any order is entered confirming the sale, it shall be proved to the satisfaction of the court that notice was given of the sale as herein prescribed, and the order of confirmation shall state that such proof was made.

Postponem't
of sale.

SEC. 176. If, at the time appointed for the same, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale shall be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Notice of
postponem't.

SEC. 177. In case of the adjournments, notice thereof shall be given by a public declaration at the time and place first appointed for the sale; and if the adjournment be for more than one day, further notice shall be given by posting notices, in three or more public places, in the county where the land is situated, or publishing the same, or both, as time and circumstances will admit.

To pay
legacies.

SEC. 178. When a testator shall have given any legacy by will that is effectual to pass or charge real estate, and his goods, chattels, rights and credits, shall be insufficient to pay a legacy, together with his debts and the charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this chapter in case of a sale for the payment of debts.

Provided by
will.

SEC. 179. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

Order of
court, when
required.

SEC. 180. When such provision has been made, or any property directed by the will to be sold, whether for payment of debts or expenses, [or] for any other purpose, the executor or administrator, with the will annexed, may proceed to sell, without the order of the probate court, but he shall be bound as an administrator to give notice of the sale, and to return accounts thereof to the court, and to proceed in making the sale in all respects as if it were made under the order of the

court, unless there are special directions given in the will, in which case he shall be governed by such directions. But in all cases, no sale shall be valid unless confirmed by the court, under the rules prescribed in cases of sales of real estate by an administrator; and before granting such confirmation, the court may require security, as in cases of sales of land by an administrator.

SEC. 181. If the provision made by the will, or the estate appropriated, be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this act.

When provision by will insufficient.

SEC. 182. The estate, real and personal, given by will to any legatees or devisees, shall be held liable to the payment of debts, expenses of administration and family expenses, in proportion to the value or amount of the several devises or legacies, except that specific devises or legacies may be exempted, if it shall appear to the court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

Proportion of estates liable for debts.

SEC. 183. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses; and the probate court, when distribution is made, shall, by decree for that purpose, settle the amount for the several liabilities, and decree how much each person shall contribute.

Contribution among legatees.

SEC. 184. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this chapter in respect to lands of which he died seized, except as hereinafter provided.

Of contract for purchase of land.

SEC. 185. Such sale shall be made subject to all payments that may thereafter become due on such contracts; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge, until the purchasers shall execute a bond to the executor and administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve.

Purchaser to give bond.

SEC. 186. Such bond shall be conditioned that the purchaser will make all payments for such land that shall become due after the date of such sale, and will indemnify the execu-

Conditions of

tor or administrator, and the person so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required by the purchaser.

Executor to
assign con-
tract.

SEC. 187. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vender of such land as the deceased would have had if he were living.

Mortgage on
land.

SEC. 188. When any sale is made by an executor or administrator, pursuant to the provisions of this chapter, of land subject to any mortgage or lien, which is a valid claim against the estate of the deceased, the purchase money shall be applied, after paying the necessary expenses of the sale, first to the payment and ratification of the mortgage or lien, and the residue in due course of administration. Such application of the purchase money to the satisfaction of the mortgage or lien, shall be made without delay; and the land shall remain subject to such mortgage or lien, until the purchase money shall have been actually so applied; *provided*, however, that when it shall be shown to be necessary, the court may direct that sufficient of such purchase money be retained to meet such portions of the family allowance, and charges, and expenses of administration, as may properly be required from the holder of such claims. Such reservation of a portion of the purchase money shall not prevent the discharge of the mortgage or lien, and no lien against any estate shall be affected by the statute of limitations, pending the proceedings for the settlement of such estate.

Expenses of.

SEC. 189. In all cases in which land is sold by an executor or administrator, the necessary expenses of the sale shall first be paid out of the proceeds.

Misconduct
in sale.

SEC. 190. If there shall be any neglect or misconduct in the proceedings of an executor in relation to any sale, by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

Fraudulent
sale.

SEC. 191. Any executor or administrator, who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person having an estate of inheritance therein.

Limitation
of action.

SEC. 192. No action for the recovery of any estate, sold by an executor or administrator under the provisions of this chapter, shall be maintained by any heir or other person claiming

under the deceased testator or intestate, unless it be commenced within three years next after the sale.

SEC. 193. The preceding section shall not apply to minors, or others, under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such action at any time within three years after the removal of the disability. Not to apply in certain cases.

SEC. 194. Whenever a sale has been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglects to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made. Account of.

SEC. 195. No executor or administrator shall, directly or indirectly, purchase any property of the estate he represented. Not to purchase.

VIII.—OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

SEC. 196. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and shall collect all debts due to the deceased. To take possession of.

SEC. 197. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates. May sue and be sued for recovery of.

SEC. 198. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the deceased in his lifetime. May sue for trespass.

SEC. 199. Any person, or his personal representatives, shall have action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or conveyed to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person. Same, or testator.

SEC. 200. When there was any partnership existing between the testator and intestate at the time of his death, and any other person, the surviving partner shall have the right to continue in possession of the effects of the partnership, and to settle its business, but the interest of the deceased shall be included in the inventory, and appraised as other property. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account with the executor or administrator, and pay over such balances as may from time Partnership interest to be appraised.

to time be payable to him in right of his testator or intestate. Upon the application of the executor or administrator, the probate judge may, whenever it may appear necessary, order the surviving partner to render an account, and in case of neglect or refusal, may, after notice, compel it by attachment. And the executors or administrators may maintain against him any action which his testator or intestate could have maintained.

Action on
bond of.

SEC. 201. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

Who to join
in action.

SEC. 202. In actions brought by or against executors, it shall not be necessary to join those as parties to whom letters shall have been issued, and who have not qualified.

Debts
compounded

SEC. 203. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the probate court or judge, may compound with him and give him a discharge, upon receiving a fair and just dividend of his effects. A compromise may also be authorized, when it shall appear to be just and for the best interest of the estate.

Recovery of
property
fraudulently
disposed of
by testator.

SEC. 204. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditor all such real estate so fraudulently conveyed, and may, also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Same.

SEC. 205. No executor or administrator shall be bound to sue for such estate, as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased; nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate judge shall direct.

Disposition
of, so re-
covered.

SEC. 206. All real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court; and the proceeds of all goods, chattels, rights, and credits so recovered, shall be appropriated in payment to the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

IX.—CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC. 207. When any person, who is bound by contract, in writing, to convey any real estate, shall die before making the conveyance, the probate court may make a decree, authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto in all cases where such deceased person, if living, might be compelled to make such conveyance.

Contracts for
sale to be
completed.

SEC. 208. On the presentation of a petition, by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court; and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least four successive weeks before such hearing, in such newspaper in this territory as he may designate.

Petition for.

SEC. 209. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit, or otherwise, of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear and contest such petition, by filing their objections in writing, and the court may examine, on oath, the petitioner, and all who may be produced before him for that purpose.

Hearing of.

SEC. 210. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the court be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, the court shall make a decree, authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

Order to
execute
conveyance.

SEC. 211. Any person interested may appeal from such decree to the district court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded with the deed, in the office of the recorder, in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Appeal from
order.

SEC. 212. If, upon a hearing in the probate court, as herein before provided, the court shall doubt the right of the petitioner to have a specific performance of the contract, the court shall dismiss the petitioner, without prejudice to the rights of the petitioner, who may, at any time within six months there-

Petition
dismissed.

after, proceed in the district court to enforce a specific performance.

Effect of conveyance.

SEC. 213. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living and then executed the conveyance.

Effect of recording decree.

SEC. 214. A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the office of the recorder of the county where the lands lie, shall give the person entitled to the conveyance a right to the provision of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Enforcing decree.

SEC. 215. The recording of any decree, as provided above, shall not prevent the court making such decree from enforcing the same by other process.

Death of party to whom conveyance is made.

SEC. 216. If the person to whom the conveyance was to be made, shall die before the commencement of the proceedings, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced, and the conveyance shall be so made as to vest the estate in the same person who would have been entitled to it, or in the executor or administrator for their benefit.

X.—ACCOUNTS TO BE RENDERED BY EXECUTORS AND ADMINISTRATORS, AND PAYMENT OF DEBTS.

Executor, when personally liable for.

SEC. 217. No executor or administrator shall be chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Executor, with what chargeable.

SEC. 218. Every executor and administrator shall be chargeable in his account with the whole of the estate of the deceased, which may come to his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of the estate.

Executor, no profit or loss to.

SEC. 219. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall sell any part of the estate for more than the appraise

ment, and if any shall be sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

SEC. 220. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault. Uncollected debts.

SEC. 221. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides; but when the deceased shall, by his will, make some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will. Compensat'n of executor.

SEC. 222. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid. Not to purchase claims ag'nst estate.

SEC. 223. When no compensation shall have been provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent.; for all above that sum, and not exceeding ten thousand dollars, at the rate of five per cent.; for all above that sum, at the rate of four per cent., and the same commissions shall be allowed to administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable for any extraordinary services not required by an executor or administrator in the common course of his duty; *provided*, the total amount of such allowances shall not exceed the amount of commission allowed by this section. Commission in lieu of compensa'n.

SEC. 224. At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator shall render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs. Accounts.

SEC. 225. If the executor or administrator fail to render an exhibit at the third term of the court, it shall be the duty of the judge to cause a citation to be issued requiring him to appear and render it. Citation for.

SEC. 226. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth Exhibit of receipts.

the facts, showing that it is necessary and proper that such an exhibit should be made.

Citation for.

SEC. 227. If the judge be satisfied, either from the oath of the applicant, or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which shall be during a term of the court, and render an exhibit as prayed for.

Objection.

SEC. 228. When an exhibit is rendered by an executor or administrator, any person interested may appear, and, by objection, in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of negligence, or has wasted, or embezzled, or mismanaged the estate, his letters shall be revoked.

Attachment
for disobey-
ing citation.

SEC. 229. If any executor or administrator neglect or refuse to appear and render an exhibit, after having been duly cited, an attachment may be duly issued against him, or his letters may be revoked, in the discretion of the court.

Account,
when to be
rendered.

SEC. 230. Every executor or administrator shall render a full account and report of his administration upon the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the court or judge to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation has been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered shall exhibit not only the debts which may have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the account.

What to
prohibit.

Account
after author-
ity is revok'd

SEC. 231. Whenever the authority of an executor or administrator shall cease or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Revocation
for failure to
account.

SEC. 232. If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after being committed where the attachment has been executed, his letters shall be revoked.

Vouchers for
all payments

SEC. 233. In rendering his account the executor or administrator shall produce vouchers for all charges and expenses which he shall have paid, which vouchers shall be filed and

remain in the court; and he may be examined on oath, touching such payments, and also touching any property and effects of the deceased, and the disposition thereof. When any such voucher shall be required for other purposes, it may be withdrawn on leaving a certified copy on file; if any voucher be lost, or for other good reason the same cannot be produced on settlement, the payment may be proved by the oath of any competent witness.

SEC. 234. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath positive to the fact of payment, specifying where and to whom the payment was made, and if such oath be uncontradicted; but such allowance, in the whole, shall not exceed five hundred dollars for payment in behalf of any one estate.

Items less than twenty dollars excepted.

SEC. 235. When any account is rendered for settlement, the court or judge shall appoint a day for settlement thereof; the clerk shall thereupon give notice thereof, by causing notices to be posted in at least three public places in the county. The notice shall set forth the name of the estate, and of the executor or administrator, and the day appointed for the settlement of the account, which shall be on some day of a term of a court. The court, or probate judge, may order such further notice to be given as he may deem proper.

Notice of settlement.

SEC. 236. On the day appointed, or any subsequent day to which the hearing may be adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Exceptions to account.

SEC. 237. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account as any other person having an interest might contest it, and who shall be allowed by the court for his services a reasonable compensation. The court shall, also, if it deems it necessary, appoint an attorney to represent the absent heirs and devisees. All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown.

Minor to have guardian.

SEC. 238. The hearing and allegations of the respective parties may be adjourned from time to time, as shall be necessary, and the court may appoint one or more referees to examine the accounts, and make report thereon, subject to confirmation, and may allow a reasonable compensation to such referees, to be paid out of the estate of the deceased.

Referees to be appointed

SEC. 239. The settlement of the account, and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability,

Settlement to be conclusive.

their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall cease; and, in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

Proof of
notice of
settlement.

SEC. 240. The account shall not be allowed by the court until it be first proved that the notice has been given as required by this chapter, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

Debts, order
in which
paid.

SEC. 241. The debts of the estate shall be paid in the following order: First. Funeral expenses. Second. The expenses of the last sickness. Third. Debts having preference by the laws of the United States. Fourth. Judgments rendered against the deceased in his lifetime, and mortgages in the order of their date. Fifth. All other demands against the estate.

Preference
to mortgage.

SEC. 242. The preference given in the preceding section to a mortgage, shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

Dividend,
insufficient
estate.

SEC. 243. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

Funeral
expenses.

SEC. 244. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands, to pay the funeral expenses, and the expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt, or any legacy, until, as prescribed in this act, the payment has been ordered by the court.

Order for
payment of
creditors.

SEC. 245. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account shall be considered as a final account, and the executor or administrator shall be entitled to his discharge, on producing and filing the necessary vouchers and proofs, showing that such payments have been made, and that he has fully complied with the decree of the court.

Disputed
claims.

SEC. 246. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or

such part of the same as the holder would be entitled to if the claim were due, or established, or absolute, shall be paid into the court, where it shall remain, to be paid over to the party when he shall become entitled thereto, or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the estate require; *provided*, that if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

SEC. 247. Whenever a decree shall be made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the district court in favor of each creditor, and the same proceeding may be had under such execution, as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

Executor
liable after
decree for
payment.

SEC. 248. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order of payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator shall have failed to give notice to the creditors, as prescribed by this act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed; *provided*, that this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent, and did not become absolute ten months before such day.

Claims not
included in
order for
payment.

SEC. 249. If the whole of the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies, and the distribution of the estate, among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reason, the estate be not in a proper condition to be closed, the court shall give such extension of time as may be reasonable, for a final settlement of the estate.

Payment of
legacies and
distribution.

SEC. 250. At the time designated in the last section, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator shall render a final account, and pray a settlement of his administration.

Final
account.

SEC. 251. If he neglect to render his account, the same pro-

Proceedings
on neglect
to render.

ceedings may be had, as prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

XI.—PARTITION AND DISTRIBUTION OF ESTATES.

Petition of
heirs.

SEC. 252. At any time after the lapse of four months after the issuing of letters testamentary or of administration, any heir, devisee, or legatee, may present his petition to the court, that the legacy or share of the estate to which he is entitled may be given to him, upon his giving bonds with security for the payment of his proportion of the debts of the estate.

Notice of.

SEC. 253. Notice of the application shall be given to the executor or administrator personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Who may
resist.

SEC. 254. The executor or administrator, or any person interested in the estate, may appear and resist the application, or any other heir, devisee, or legatee, may make a similar application for himself.

Decree for.

SEC. 255. If, at the hearing, it appear that the estate is but little indebted, and that the share of the party or parties applying may be allowed to him or them, without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants; *provided*, each one of them shall first execute and deliver to the executor or administrator, a bond in such sum as shall be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the heir, legatee, or devisee, whenever required, of his proportion of the debts due from the estate.

Same.

SEC. 256. Such decree may order the executor or administrator to deliver to the heir, legatee, or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof.

Where
necessary.

SEC. 257. If [in] the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

Costs of.

SEC. 258. The costs of the proceedings authorized by the preceding sections, shall be paid by the applicant, or, if there be more than one, shall be apportioned equally amongst them.

Order for
payment of
bond.

SEC. 259. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear

and show cause why an order shall not be made. At the hearing, the court, if satisfied of the necessity of such payment, shall make an order accordingly, designating the amount, and giving a time within which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond. Action on bond.

SEC. 260. Upon the final settlement of the accounts of the executor or administrator (or at any subsequent time, upon the application of the executor or administrator), or any heir, legatee, or devisee, or the grantee of the heir, legatee, or devisee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled. A statement of the receipts and disbursements of the executor or administrator, since the rendition of his final accounts, shall be reported and filed at the time of making such distribution, unless distribution of the real estate only be made, and a settlement thereof, together with an estimate of the expenses of closing the estate, shall be made by the court, and shall be included in the decree, or the court or judge may order notice of the settlement of such supplementary account, and may refer the same, as in other cases of the settlement of accounts. Distribution, when made.

SEC. 261. In the decree the court shall name the persons, and the proportion or parts to which each shall be entitled, and such person shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession. Form of decree.

SEC. 262. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice [has been] given, or waived, and proceedings had in the manner provided in sections one hundred and fifty-two to and including one hundred and ninety-five of this act, in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper. If partition be applied for, as hereinafter provided, such decree shall not divest the court of jurisdiction for the purposes of partition, unless the estate be finally closed by the decree of distribution. On whose application.

SEC. 263. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, or when property of the estate shall be held in common and undivided with other parties, partition may be made by three disinterested persons, to be appointed commissioners for that purpose by the court or probate judge, who shall be duly sworn to the faithful discharge of their duties by any officer authorized to administer oaths. A certified copy of the order of their appointment, and of the decree assigning and distributing the estate, shall be issued to them as their warrant, and their oath shall be indorsed thereon. Upon consent Of estate in common.

of the parties, and when the court shall deem it proper and just, it shall be sufficient to appoint one commissioner only, who shall have the same authority, and be governed by the same rules, as if three were appointed.

Real estate
in different
counties.

SEC. 264. If the real estate shall be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county; and, in such cases, the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioner first appointed shall, unless otherwise directed by the probate court, make division of such real estate wherever situated within this territory.

Notice
necessary.

SEC. 265. Such partition and distribution may be ordered on the petition of any of the persons interested; but before commissioners shall be appointed, or any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested who shall reside in this territory, or their guardians, and to agents, attorneys, or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court shall direct. The petition for partition may be filed at any time before the decree of distribution, and attorneys, guardians, and agents, may be appointed, and notice be given, but the commissioners shall not be appointed until the decree has been made assigning the estate. But when the application is made solely to have partition between the estate administered upon, and any other parties, such application may be made and such partition ordered at any time the court may direct.

Petition for,
when filed.

Partition,
when heirs
part with
interest.

SEC. 266. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

Shares, how
set out.

SEC. 267. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished, unless two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided.

Whole estate
may be as-
signed to one
in certain
cases.

SEC. 268. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger; *provided*, the party accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction; or, in case of the minority of such party or parties, then to the

satisfaction of his or her guardian, and the true value of the estate shall be ascertained and reported by commissioners.

SEC. 269. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding sections; *provided*, the party so accepting shall pay or secure to one or more of the others such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

Payments
for equaliz'g.

SEC. 270. When it cannot otherwise be fairly divided, the whole, or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by a commissioner appointed for that purpose, and distribute the proceeds. The sale shall be conducted and reported upon, and confirmed, in the same manner and under the same rules, as in ordinary cases of sales of land by an administrator under this act.

Estate may
be sold, and
proceeds
divided.

SEC. 271. When partition of real estate among heirs or devisees shall be required, and such real estate shall be in common, and undivided with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate in which it lies in common, and such division so made and established by the probate court, shall be binding upon all the persons interested. Upon application by petition of the heirs, or creditors, or any of them, the probate court may authorize the executor or administrator to bring suit for such partition in the district court. Such suit may also be brought by the executor, when so authorized by the will.

Of estate in
common.

SEC. 272. Before every partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the territory, or an attorney for all absent heirs and persons interested; and notice shall be given to all parties interested in the partition, their guardians, agents and attorneys, by the commissioners, of the time when they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

Guardian for
minors.

SEC. 273. The commissioners shall make report of their proceedings, and of the partition agreed upon by them, to the probate court, in writing, and the court may, for sufficient reasons, set aside such report, and commit the same to the same

Report may
be set aside.

commissioners, or appoint others; and when such report shall be finally confirmed, a certified copy of partition made thereon, attested by the clerk, under the seal of the court, shall be recorded in the office of the recorder of the county where the lands lie.

When com-
miss'rs not
necessary.

SEC. 274. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall request that such partition shall be made.

Advancem'ts

SEC. 275. All questions as to advancements made, or alleged to have been made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning and distributing the estate, and [in] the warrant to the commissioners, and the final decree of the probate court, or in case of appeal to the supreme court, shall be binding on all parties interested in the estate.

Agent for
absentees.

SEC. 276. When any estate shall be assigned by decree of the court, or distributed by commissioners, as provided in this chapter, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

Bond of.

SEC. 277. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the court appointing such agent, may allow a reasonable sum out of the profits of the estate for his services and expenses.

Unclaimed
estate.

SEC. 278. When the estate shall remain in the hands of the agent unclaimed for a year, it shall be sold under the order of the court, and the proceeds, deducting the expenses of the sale, to be allowed by the court, shall be paid into the territorial treasury. When the payment is made, the agent shall take from the treasury duplicate receipts, one of which he shall file in the office of the [territorial] auditor, and the other in the probate court.

Liability of
agent.

SEC. 279. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale, as required in the preceding section, and may be sued thereon by any person interested.

Certificate to
claimant.

SEC. 280. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate under seal; and upon the presentation of the cer-

tificate to the [territorial] auditor, he shall draw his warrant on the treasurer for the amount.

SEC. 281. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under the order of the court, all the property of the estate to the parties entitled, and performed all acts lawfully required of him, the court shall make a decree discharging him from all liability to be incurred thereafter.

Decree
discharging
executor.

SEC. 282. The final settlement of an estate shall not prevent a subsequent issuance of letters testamentary or of administration with the will annexed, should other property of the estate be discovered, or should it become necessary or proper from any cause that letters should be again issued.

Letters, etc.,
may issue
after.

XII.—REMOVAL OF EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC. 283. Whenever the probate judge has reason to believe from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed, or is about to commit a fraud upon the estate, or has been incompetent to act, or has permanently removed from the territory, or has wrongfully neglected the estate, or has long neglected to perform the necessary acts as such executor or administrator, it shall be his duty, by an order entered upon the minutes of the court, to suspend the powers of such executor or administrator until the matter can be investigated.

Suspension
of powers of
exec'rs, etc.

SEC. 284. During the suspension of the powers of the executor or administrator, under the authority of the preceding section, the probate judge or court may, if the condition of the estate requires it, appoint a special administrator to take charge of the effects of the estate, who shall give the bond, and account as other special administrators are required to do.

Special ad-
ministrator,
suspens'n of.

SEC. 285. When such suspension has been made, notice thereof shall be given to the executor or administrator, and he shall be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court shall be satisfied that there exists cause for his removal, his letters shall be revoked, and letters of administration granted anew, as the case may require.

Proceedings
on.

SEC. 286. At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed. Such allegations shall be heard and determined by the court.

Who may
appear.

SEC. 287. If the executor or administrator has absconded, or conceals himself, or has removed or absented himself from

Executor
absconding.

the territory, notice may be given him of the pendency of the proceedings, by publication, in such manner as the court may direct; and the court may proceed upon such notice as if the citation had been personally served.

Attachment
to compel
attendance.

SEC. 288. In the proceedings authorized by the preceding sections of this chapter, for the removal of an executor or administrator, the court may compel his attendance, by attachment, and may compel him to answer questions, on oath, touching his administration, and upon his refusal so to do may commit him until he obey, or may revoke his letters, or both.

XIII.—MISCELLANEOUS PROVISIONS.

Orders, etc.,
to be entered

SEC. 289. All orders and decrees made by the probate court, during its terms, shall be entered at length in the minute book of the court; and also all orders which the probate judge is empowered to make out of term-time, and which are, by this act, specially required to be so entered. Upon the close of each term, the judge shall sign the minutes of the proceedings. When any publication is ordered, such publication shall be made daily, or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this act. The court or judge may, however, prescribe a less number of publications during the period prescribed.

Personal
notice, how
given.

SEC. 290. Whenever personal notice is required [by this act] or the act to provide for the appointment, and prescribe the duties of guardians, to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation, issued from the court, signed by the clerk, and under the seal of the court, directed to the sheriff of the proper county, and requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in the citation; or the citation may be addressed directly to the party to be cited, and may be served in like manner as a summons issued from the district court. In the body of the citation shall be briefly stated the nature or character of the proceeding.

Citation, how
served and
returned.

SEC. 291. The officer to whom the citation is directed, shall serve it by delivering a copy to the person therein named, or to each of them, if there be more than one, and shall return the original to the court, according to its direction, indorsing thereon the time and manner of service. All proofs of publication, or other mode or modes of giving notice or serving papers, may be made by the affidavit of any person competent to be a witness, which affidavit shall be filed, and shall constitute *prima facie* evidence of such publication or notice of service.

Same.

SEC. 292. When no other time is specially prescribed, citation shall be served at least five days before the return day thereof.

SEC. 293. Unless otherwise specially prescribed, the clerk of the probate court shall have power to administer all oaths necessary and proper to be taken, touching any matter pending in the probate court, or in any manner connected with any proceedings of which the court has jurisdiction, and he shall have power to issue citations and subpoenas upon the application of any party, without the order of the judge, except in those cases in which such order is specially required by law for the issuing of a citation. Clerk of court,
powers of.

SEC. 294. All writs and processes issued from the probate court, shall be signed by the clerk and authenticated with the seal of the court, except subpoenas, notices, and publications, which need not be under seal. Process.

SEC. 295. The practice in the district court shall be applicable to proceedings in the probate court, so far as the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this act, or the act to provide for the appointment, and prescribe the duties of guardians. For the purpose of taking the testimony of a witness, or witnesses, in other counties of this territory, or in other states, territories and countries, a commission may be issued, whenever, in the discretion of the court, or probate judge, the same may be ordered; and when ordered, the formalities attending the issuance, execution, and return thereof, shall be similar to those prescribed in the case of a commission issued from the district court, so far as the same are applicable. When issued *ex parte*, no cross interrogations shall be necessary, unless by direction of the court or probate judge; nor shall notice be necessary unless the court or judge shall so order. The court or judge may annex cross interrogations, or may refer the matter to a referee, to be by him appointed for that purpose, and when notice is [so] ordered, the court or judge shall prescribe the mode of giving such notice, whether by personal service, or by posting notices, or by publication. Form of
practice.

Taking testi-
mony in oth-
er counties.

SEC. 296. All issues of fact shall be disposed of in the same manner as is by law provided upon the trial of issues of fact in the district court. All questions of costs may be determined by the probate court, and execution may issue therefor, in accordance with the order of the probate court. Issues of fact

Costs.

SEC. 297. When, upon any proceeding in an estate, an attorney has been appointed for minors and absent persons in interest in the estate, such attorney shall represent such parties in any subsequent proceedings had, unless on such subsequent proceedings another person be appointed, and, *provided*, such attorney be present in court in such subsequent proceedings. When any such attorney has been appointed, and when the probate judge has appointed a referee to take proofs, make computation, or perform other service, a reasonable compensation may be allowed out of the estate to such attorney and to each referee for the services he may have rendered. Attorney for
minors, etc.

Compensa'n.

Decree of
homestead to
be certified.

SEC. 298. When a decree is rendered setting apart a homestead, or making distribution of real estate, or determining any other matter affecting the title to real estate, a certified copy of such decree shall be recorded in the office of the recorder of the county in which the land is situated.

Appeals to
district
court.

SEC. 299. If any person interested in, or to be affected by, and who shall be aggrieved by any order, allowance, sentence, decree, or denial, of any probate court or judge, or any other act in his official capacity, may appeal therefrom to the district court of the judicial district in which said probate court is held.

When and
how taken.

SEC. 300. The appeal may be taken within twenty days after the order, allowance, sentence, decree, denial, or any other official act of the probate court or judge, is made and entered in the minutes of the court. It shall be made by filing with the clerk of the probate court a notice stating the appeal from the order, decree, judgment, sentence, or allowance, or some specific part thereof, and by executing an undertaking in the same manner, and to the same effect, as upon appeal from the district court to the supreme court.

When
cognizable.

SEC. 301. Appeals shall be cognizable at the next term of the district court, which shall be holden after the expiration of twenty-four days after such appeal shall have been perfected.

Papers rela-
tive to, to
clerk district
court.

SEC. 302. Upon such appeal being perfected, and upon the clerk of said court being paid the fees allowed him by law for the services herein required of him, he shall immediately transmit to the clerk of the district court, under his official seal, a transcript of the record, proceedings, and all papers relative to the cause appealed from.

May be
reversed or
affirmed.

SEC. 303. The court above may reverse or affirm, in whole, or in part, the sentence or proceeding appealed from, and may make such decree or order thereon, as the judge of the probate court should have made, and shall remit the case to the court from whence it came for further proceedings, unless such reversal or affirmance be appealed from, as hereinafter provided.

Trial by jury

SEC. 304. If, upon hearing an appeal in the district court, any question of fact shall occur that is proper for a jury to try, the court shall, upon application, cause it to be tried by a jury upon such issue of fact, to be formed under the direction of the court.

Costs of.

SEC. 305. If the decision be affirmed, the district court shall award costs, to be paid by the party appealing, either personally or out of the estate of the deceased, as he shall direct. If the decision be reversed, costs shall, in like manner, be awarded against the party maintaining the decision of the probate judge or court, either personally, or out of the estate of the deceased.

Affirmance,
etc., to be
certified.

SEC. 306. Such affirmance, or such reversal, shall be certified to the probate court or judge, whose decision was appealed from, by the district court, with the award of costs made by him. Such probate court or judge shall enforce the payment

of the costs so awarded, in the same manner as if such award had been made by him.

SEC. 307. Any person interested in, or affected by, and aggrieved by, the decision of the district court, affirming, reversing, or modifying the decision, sentence, or order of the probate court or judge, may, in all cases where the amount involved exceeds one thousand dollars, exclusive of costs, appeal to the supreme court of this territory.

Appeal to
supreme
court.

SEC. 308. The appeal provided for in the preceding section may be taken within twenty days after the order, decree, or judgment, is made and entered in the minutes of the court. It shall be made by filing with the clerk of the district court a notice, stating the appeal from the order, decree, or judgment, or some specific part thereof, and by executing an undertaking, or giving surety on such appeal in the same manner, and to the same extent, as upon other appeals to the supreme court from the district court.

Appeal,
when taken
how made.

SEC. 309. If a party, who has a right to appeal to the supreme court, wishes a statement of the case to be annexed to the record, he shall prepare and file the same within five days after the entry of the order, judgment, or decree.

Statement
of case.

SEC. 310. Upon an appeal from the district court, as herein before provided; the appellate court may reverse, affirm, or modify the judgment, order, or decree appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and shall certify the same to the district court appealed from.

Reversal or
affirmation.

SEC. 311. When it is not otherwise prescribed by law, the probate court, or the supreme court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the estate, as justice may require. Execution for costs may issue out of the probate court.

Costs.

SEC. 312. The appeal of an executor or administrator, to the district court, or to the supreme court, as herein provided for, who has given an official bond, shall be complete and effectual without the undertaking herein before required.

Appeals,
when com-
plete.

SEC. 313. When an order or decree appointing an executor or administrator, or guardians, shall be reversed on appeal, all lawful acts in administration upon the estate, performed by such executor, administrator, or guardian, if he shall qualify, shall be as valid as if such order or decree had been affirmed. When any executor or administrator resigns, or is removed, a successor may be appointed, if a necessity therefor exists, without again proving the death and residence of the testator or intestate.

Exec'r, etc.,
removed.

Successor of.

DESCENTS AND DISTRIBUTION.

SEC. 314. When any person, having title to any estate not otherwise limited by marriage contract, shall die intestate as to such estate, it shall descend and be distributed, subject to the

Descents and
distribution.

Descents and
distribution.

payment of his or her debts, in the following manner: First. If there be a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife, and child, or issue of such child. If there be a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child, by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share equally, otherwise they shall take according to the right of representation. Second. If he or she shall leave no issue, the estate shall go in equal shares to the surviving husband or wife, and to the intestate's father. [If he or she shall leave no issue, or husband or wife, the estate shall go to his or her father.] Third. If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister, by right of representation; *provided*, that if he or she shall leave a mother, also, she shall take an equal share with the brothers and sisters. Fourth. If the intestate shall leave no issue, nor husband, nor wife, nor father, and no brother or sister living at his or her death, the estate shall go to his or her mother, to the exclusion of the issue, if any, of deceased brothers or sisters. Fifth. If the intestate shall leave a surviving husband or wife, and no issue, and no father, mother, brother, or sister, the whole estate shall go to the surviving husband or wife. Sixth. If the intestate shall leave no issue, nor husband, nor wife, and no father, mother, brother, nor sister, the estate shall go to the next of kin in equal degree; excepting, that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors shall be preferred to those claiming through an ancestor more remote; *provided*, however, Seventh. If any person shall die, leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die, under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation. Eighth. If, at the death of such child, who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of other children of the same parent;

and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally, otherwise they shall take according to the right of representation. Ninth. If the intestate shall leave no husband or wife, nor kindred, the estate shall escheat to the territory, for the support of common schools.

SEC. 315. Every illegitimate child shall be considered as an ^{illegitimate child.} heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child; and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, or adopted him into his family; in which case, such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them, intestate, and without issue, the others shall inherit his estate, and be heirs, as herein before provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the said children, as provided herein before, in like manner as if all had been legitimate. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate.

SEC. 316. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

SEC. 317. The degrees of kindred shall be computed according to the rules of the civil law, and kindred of the half blood shall inherit equally with those of the whole blood, in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors, shall be excluded from such inheritance. ^{Degrees of kindred, how computed.}

SEC. 318. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child, or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child, or other lineal descendant, towards his share of the estate of the intestate. ^{Advancem't.}

SEC. 319. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion, in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than ^{Same.}

his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Same.

SEC. 320. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such, by the child or other descendant.

Same.

SEC. 321. If the value of the estate, so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value, in the division and distribution of the estate: otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

Same.

SEC. 322. If any child, or other lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration, in the division and distribution of the estate, and the amount thereof shall be allowed accordingly, by the representatives of the heirs so advanced, in the like manner as if the advancement had been made directly to them.

Inheritance
of husband
and wife.

SEC. 323. The provisions of this act, as to the inheritance of the husband and wife from each other, apply only to the separate property of the intestate.

By right of
representa'n.

SEC. 324. Inheritance or succession "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Escheated
estates.

SEC. 325. If any person shall die, or any person who may have died within the limits of what is now the territory of Nevada, seized of any real or personal estate, and leaving no heirs, representatives, or devisees, capable of inheriting or holding the same, and in all cases when there is no owner of such real estate capable of holding the same, such estate shall escheat to and be vested in this territory.

When estates
escheat.

SEC. 326. That whenever the attorney-general [United States district attorney] shall be informed, or have reason to believe, that any real estate hath escheated to this territory, by reason that any person hath died seized thereof, and hath left no heirs capable of inheriting the same, or by reason of the incapacity of the devisees to hold the same, or when he shall be informed, or have reason to believe, that any such estate hath otherwise escheated to the territory, it shall be his duty to file an information in behalf of the territory, in the district court of the judicial district in which such estate, or any part thereof, is situated, setting forth a description of the estate, the name of the person last lawfully seized, the name of the terre-tenant and persons claiming such estate, if known, and the facts and circum-

Proceedings
to inquire
into.

stances in consequence of which said estate is claimed to have escheated, and alleging that by reason thereof the territory of Nevada hath right, by law, to such estate; whereupon such court shall award and issue a summons against such person or persons, bodies politic or corporate, alleged in such information to hold, possess, or claim, such estate, requiring them to appear and show cause why such estate should not be vested in the territory, within the time allowed by law in other civil cases, and the court shall make an order, setting forth briefly the contents of said information, and requiring all persons interested in the estate to appear and show cause, if any they have, within thirty days from the date of said order, why the same should not vest in this territory, which order shall be published, at least one month, from the date thereof, in a newspaper published in said district (if one be published therein, and in case no newspaper should be published in said district), by direction of the judge, in some other newspaper in this territory.

SEC. 327. All persons, bodies politic and corporate, named in such information as terre-tenant, or claimant to the estate, may appear and plead to such proceedings, and may traverse or deny the facts stated in the information, the title of the territory to lands and tenements therein mentioned, at any time on or before the third day of the return day of the summons; and any other person claiming an interest in such estate, may appear and be made a defendant, and plead as aforesaid, by motion for that purpose in open court, within the time allowed for pleading, as aforesaid; and if any person shall appear and plead, as aforesaid, or shall refuse to plead within the time, then judgment shall be rendered that the territory be seized of the lands and tenements in such information claimed. But if any person shall appear and deny the title set up by the territory, or traverse any material fact set forth in the information, or issue or issues shall be made up and tried as other issues of fact, and a survey may be ordered and entered as in other actions when the title or boundary is drawn in question; and if, after the issues are tried, it shall appear from the facts, found or admitted, that the territory hath good title to the land and tenements in the information mentioned, or any part thereof, judgment shall be rendered that the territory be seized thereof, and recover costs of suit against the defendants.

Pleadings.

Title of territory to lands escheated.

SEC. 328. Any party who shall have appeared to any proceedings, as aforesaid, and the attorney-general [United States district attorney] in behalf of the territory, shall, respectively, have the same right to prosecute an appeal or writ of error, upon any judgment as aforesaid, as parties in other cases.

SEC. 329. The auditor of the territory shall keep just and true accounts of all moneys paid into the treasury, all lands vested in the territory, as aforesaid; and if any person shall

Territorial
auditor to
keep account
of moneys
and lands.

Claims,
examination
of.

Legislature
to sell.

Receiver
may be
appointed.

Compensat'n
of informer.

appear within ten years after the death of the intestate, and claim any moneys paid into the treasury, as aforesaid, as heir or legal representative, such person may file a petition to the district court in which the seat of government may be staying, stating the nature of his claim, and praying such money may be paid him; a copy of such petition shall be served on the attorney-general [United States district attorney] at least twenty days before the hearing of said petition, who shall put in answer to the same, and the court thereupon shall examine said claim, and the allegations and proofs; and if the court shall find that such person is entitled to any money paid into the territorial treasury, he shall, by an order, direct the [territorial] auditor to issue his warrant on the treasury for the payment of the same, but without interest or cost to the territory; a copy of which order, under the seal of the court, shall be a sufficient voucher for issuing such warrant; and if any person shall appear and claim land vested in the territory, as aforesaid, within five years after the judgment was rendered, it shall be lawful for such person (other than such as was served with a summons or appeared to the proceeding, their heirs or assigns), to file in the said district court, in which the lands claimed lie, a petition setting forth the nature of his claim, and praying that the said lands may be relinquished to him; a copy of which petition shall be served on the attorney-general [United States district attorney], who shall put in an answer, and the court thereupon shall examine said claim, allegations and proofs, and if it shall appear that such person is entitled to such land claimed, the court shall decree accordingly, which shall be effectual for divesting the interest of the territory in or to the lands; but no costs shall be charged to the territory; and all persons who shall fail to appear and file their petition within the time limited, as aforesaid, shall be forever barred; saving, however, infants, married women, and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petition, as aforesaid, at any time within five years after their respective disabilities are removed; *provided*, however, that the legislature may cause such lands to be sold at any time after seizure, in such manner as may be provided by law; in which case the claimants shall be entitled to the proceeds, in lieu of such lands, upon obtaining a decree or order, as aforesaid.

SEC. 330. The said district court, upon the filing of said information and application of the attorney-general [United States district attorney], either before or after answer, upon notice to the party or parties claiming such estate, if known, may, sufficient cause therefor being shown, appoint a receiver to take charge and receive the rents and profits of the same, until the title to such real estate shall be finally settled.

SEC. 331. Any person furnishing original information to the attorney-general [United States district attorney] of the escheat-

ing of any property to the territory, together with the necessary evidence to sustain the action of the territory in such behalf, shall be entitled to receive, upon the final recovery of such property, five per centum of the property so recovered; *provided*, that the amount so received by the person or persons furnishing such information, shall not in the aggregate exceed the sum of twenty thousand dollars in any one case; and *provided*, that only one person shall be entitled to compensation for such services.

SEC. 332. All moneys which have accrued, or may hereafter accrue to this territory, from escheated estates, shall be paid into the general fund, and, if need be, in the defrayment of the current expenses of the government and the redemption of auditor's warrants. Disposition
of moneys.

CHAP. LVI.—*An Act to provide Revenue for the Support of the Government of the United States.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. There shall be levied and collected, for the year eighteen hundred and sixty-two, a special tax, of one mill on each dollar taxable property of this territory, for the purpose of paying the proportion allotted to Nevada Territory, by congress, for the support of the government of the United States, and the same shall be levied and collected as hereinafter provided. Special tax
for.

SEC. 2. In case the amount of taxes provided in the last section to be levied, shall be insufficient to pay the amount due the United States, from this territory, then the territorial treasurer is hereby required to set apart a sufficient amount to make up such deficiency, out of any money in the territorial treasury not heretofore specifically appropriated by law; and in case the tax provided for in the first section of this act shall exceed the amount required of this territory, by congress, then and in that event such surplus shall be paid into the territorial treasury, for territorial purposes. Insufficiency
of, to pay.

Surplus.

SEC. 3. It shall be the duty of the territorial treasurer, upon the demand of the proper officer, to pay over to the treasurer of the United States the amount due from this territory, under the law of the last session of congress, and take a duplicate receipt therefor, one to be filed in the office of the auditor of the territory, and the other to be filed in the office of the said territorial treasurer. Territorial
treasurer,
duties of.

How
collected.

SEC. 4. The tax provided for in this act shall be levied, assessed, and collected, by the same officer, at the same time and in the same manner, and the collection of the same enforced by the same means, as is by law provided for the levying, assessing, and collecting, territorial revenue.

CHAP. LVII.—*An Act to regulate Fees and Costs.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the fees and compensation of the several officers and persons herein named, shall be as follows in the several counties of the territory of Nevada, to wit:

OF NOTARIES PUBLIC.

SEC. 2. For drawing and copying every protest for the non-payment of a promissory note, or for the non-payment, or non-acceptance of a bill of exchange, draft, or check, two dollars.

For drawing and serving every notice of non-payment of a promissory note, or the non-payment, or non-acceptance of a bill of exchange, order, draft, or check, one dollar.

For recording every protest, one dollar.

For drawing an affidavit, deposition, or other paper, for which provision is not herein named, for each folio, twenty cents.

For taking an acknowledgment or proof of a deed, or other instrument, to include the seal and writing of the certificate, for the first signature, one dollar.

For each additional signature, twenty-five cents.

For administering an oath, or affirmation, twenty-five cents.

For every certificate, to include writing the same, and the seal, one dollar.

OF CLERK OF DISTRICT COURT.

SEC. 3. For entering each suit on the clerk's register of action, and making the necessary entries therein during the progress of the trial, for each folio, twenty-five cents.

For entering each suit on the clerk's register of actions, and making the necessary entries therein during the trial, twenty-five cents.

For entering each suit on the clerk's register of action, twenty-five cents.

For making the necessary entries thereon during the trial, for each folio, twenty-five cents.

For issuing every writ or process, under seal, fifty cents.

For issuing subpoena, for each witness, fifty cents.

- For filing each paper, twenty-five cents.
- For entering every motion, rule, order, or default, fifty cents.
- For entering every discontinuance, dismissal, or non-suit, fifty cents.
- For entering every cause on the calendar, and making a copy thereof for the bar, for each term of the court, twenty-five cents.
- For calling and swearing every jury, fifty cents.
- For receiving and entering each verdict of a jury, fifty cents.
- For entering every final judgment, for the first folio, one dollar.
- For each subsequent folio, twenty-five cents.
- For filing judgment roll, fifty cents.
- For entering satisfaction of judgment, fifty cents.
- For entering judgment on judgment docket, twenty-five cents.
- For administering every oath or affirmation, twenty-five cents.
- For certifying every oath or affirmation, twenty-five cents.
- For copy of any proceeding, record, or paper, for each folio, twenty-five cents.
- For every certificate under seal, fifty cents.
- For searching files of each year in his office (but not to charge suitors or attorneys), one dollar.
- For issuing every commission to take testimony, fifty cents.
- For taking down testimony of witnesses during the trial, for each folio, to be paid by the party requiring the same, twenty cents.
- For issuing every execution or other final process, fifty cents.
- For issuing every decree or order of sale of mortgaged property, one dollar.
- For issuing writ of injunction, or attachment, fifty cents.
- For entering judgment by confession, the same fees as in other cases of entering judgment.
- For receiving and filing every *remittitur* from the supreme court, and accompanying papers, fifty cents.
- For taking each bond required by law, fifty cents.
- For taking justification thereto, fifty cents.
- For acknowledgment of deed, or other instrument, including all writing, and the seal, for the first name, fifty cents.
- Each additional name, fifty cents.
- For issuing subpoena for one or more witnesses, twenty-five cents.
- For acknowledgment of deed, or other instrument, including all writing, and the seal, for each name thereto, one dollar.
- For filing each paper, one dollar.
- For administering every oath, or affirmation, and certifying to the same, one dollar.
- For taking justification to bond, for each name thereto, one dollar.

For entering return of attachment, execution, or other process, one dollar.

For entering each suit in plaintiff's index, one dollar.

For issuing every decree or order of sale of mortgaged property or writ of injunction, for the first folio, one dollar.

For each subsequent folio, one dollar.

For entering appearance, one dollar.

For polling each jury, one dollar.

For entering every cause on the calendar, and making a copy thereof for the bar, one dollar.

For every attestation under seal, one dollar.

For issuing every writ of injunction, one dollar.

When the court is sitting as a court of criminal jurisdiction, for the trial of each issue, when the charge is felony, five dollars.

For the trial of each issue, where the charge is misdemeanor, three dollars.

He shall receive no other fees, for any service whatever, in a criminal action, or proceeding, except for copies of papers, for each folio, twenty cents.

When the court is sitting as a court of criminal jurisdiction, he shall receive for the trial of each issue, twenty cents.

CLERK OF PROBATE COURT.

SEC. 4. For filing all papers sent on appeal from justices' courts, in each cause, and making the necessary entries concerning the same, two dollars.

For all other services, except those hereafter specified, the same fees as are allowed in the district court for similar services.

For each day's attendance at the session of the board of county commissioners, five dollars.

For issuing letters testamentary, or of administration, fifty cents.

For certificate of appointing appraisers, or guardians, fifty cents.

For writing and posting notices, when required, for each copy, fifty cents.

For notice given by publication, in addition to the cost of publication, fifty cents.

For recording wills, per folio, twenty cents.

For all other services, the same fees as are allowed the clerk of the district court for similar services.

OF COUNTY RECORDER.

SEC. 5. For recording any instrument, paper, or notice, when required, for each folio, thirty-five cents.

For copies of any record, or paper, per folio, thirty-five cents.

For filing or receiving every instrument for record, and making the necessary entries therein, twenty-five cents.

For making, in the several indexes required, all the entries required, of the filing and recording any instrument, paper, or notice, for every such instrument or notice, thirty cents.

For every certificate, under seal, to copies of papers or records in his office, when required, fifty cents.

For every entry of discharge of mortgage on margin of record, seventy-five cents.

For searching records and files of each year in his office, when required, fifty cents.

For abstract or certificate of title, when required, for each conveyance or incumbrance certified, twenty-five cents.

For recording every town-plat, for each course, fifteen cents.

For figures and lettering plats and maps, per folio, fifty cents.

For taking and writing acknowledgments, including seal, for the first signature, fifty cents.

For each additional signature, fifty cents.

For filing and entering minute of certificate of sheriff's sale, fifty cents.

For filing and entering minute of certificate of tax sale, fifty cents.

For recording a marriage certificate, one dollar.

For filing and keeping each paper not required to be recorded, and indorsing the same, if required, fifty cents.

For recording every instrument, paper, or notice, when required, in the English language, for each folio, fifty cents.

In the Spanish language, per folio, fifty cents.

For making in the several indexes the entries required of the filing and recording any instrument, paper, or notice, for each entry, fifty cents.

For every certificate or attestation, under seal, fifty cents.

For indexing every satisfaction of mortgage, fifty cents.

For recording every plat or map, for every course, fifty cents.

For recording certificate of birth, death, or appointment of executors or administrators, fifty cents.

For recording every mark, brand, or counterbrand, fifty cents.

For taking and writing acknowledgments, including seal, for each signature, fifty cents.

OF SHERIFF.

SEC. 6. For serving a summons in civil suit, or any other process by which an action or proceeding is commenced, on every defendant, two dollars.

For traveling in making such service, per mile, in going only, to be computed in all cases from the court-house of the county; *provided*, that if any two or more papers required to be served in the same suit, at the same time, one mileage only shall be charged, forty cents.

(But when such service is made by a deputy, or constable,

then the mileage shall only be charged for the distance traveled, to make such service from the place where the papers to be served were received by such officer.)

For taking bond, or undertaking, in any case in which he is authorized to take the same, one dollar.

For copy of any writ, process, or other paper, when demanded or required by law, for each folio, twenty cents.

For serving every notice, rule, or order, one dollar.

For serving a subpoena, for each witness summoned, fifty cents.

For traveling, per mile, in serving each subpoena or venire, in going only, but where two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant, forty cents.

For serving an attachment on property, or levying an execution, or executing an order of arrest, or an order for the delivery of personal property, and with traveling fees, as on a summons, two dollars.

(But no traveling fees shall be allowed on such attachment, order of arrest, or order for the delivery of personal property, when the same accompanies the summons in the suit, and may be executed at the time of the service of summons, unless for the distance actually traveled beyond that required to serve the summons.)

For serving an attachment upon any ship, boat, or vessel, in proceedings to enforce any lien thereon created by law, two dollars.

For making and posting notice, and advertising property for sale, on execution, or under any judgment, or order of sale, not to include the cost of publication in newspaper, two dollars.

For commissions for receiving and paying over money on execution or process, where lands or personal property has been levied on, advertised, and sold, on the first one thousand dollars, two and one half per cent.

And [on] all sums above that sum, one and one half per cent.

For commissions for receiving and paying over money on execution, without levy, or when the lands or goods levied on shall not be sold, on the first one thousand dollars, two per cent.

And on all over that sum, one per cent.

For commissions for receiving and paying over money on execution or process, when lands or personal property has been levied on, advertised and sold, on the first five hundred dollars, one per cent.

On all over five hundred dollars, and under one thousand dollars, one per cent.

On all over one thousand dollars, and under fifteen hundred dollars, one per cent.

On all over fifteen hundred dollars, one per cent.

The fees herein allowed for the levy of an execution, and for advertising, and for making or collecting the money on execution, shall be collected from the defendant, by virtue of such execution, in the same manner as the sum therein directed to be made.

For commissions for receiving and paying over money on execution, without levy, or where the land or goods levied on shall not be sold, one per cent.

For drawing and executing every sheriff's deed, to be paid for by the grantee, who shall, in addition, pay for the acknowledgment thereof, three dollars.

For serving a writ of possession, or restitution, putting any person entitled into possession of premises, and removing occupant, five dollars.

For travel, in the service of any process not herein before mentioned, for each mile necessarily traveled, in going only, forty cents.

For attending, when required, on any court, in person or by deputy, for each day, to be paid out of the county treasury, five dollars.

For bringing up a prisoner on *habeas corpus*, to testify or answer in any court, or for examination as to the cause of his arrest and detention, or to give bail, one dollar.

And for travel, each mile, from the jail, in going only, forty cents.

He shall also be allowed such further compensation for his trouble and expense in taking possession of property, under attachment or execution, or other process, and of preserving the same, as the court, from which the writ or order may issue, shall certify to be just and reasonable.

For holding an inquest, on trial of the right of property, when required, to include all service in the matter, except mileage, five dollars.

For attending on supreme court, either in person or by deputy, to be paid out of the territorial treasury, as other claims, for each day, five dollars.

For every arrest in a criminal proceeding, three dollars.

For serving each subpoena, in criminal proceedings, fifty cents.

For executing every sentence of death, twenty dollars.

For summoning a grand jury, twelve dollars.

For summoning each trial jury of twelve persons, six dollars.

For each additional juror, fifty cents.

For service in any process in criminal cases, for each mile necessarily traveled, forty cents.

And the same mileage for taking prisoners before a magistrate, or to prison. In serving subpoenas, or venire, in criminal cases, he shall receive mileage for the most distant, only, when witnesses and jurors live in the same direction.

For all services in justices' courts, the same fees as are allowed to constables in like cases.

OF CORONER.

All services in summoning jury of inquest, three dollars.

For swearing jury, one dollar.

For issuing warrant of arrest, fifty cents.

For issuing subpoena for each witness, twenty-five cents.

For each mile necessarily traveled, in going to the place of the dead body, which fees, in all inquests, shall be paid out of the county treasury, as other demands, twenty-five cents.

For all services rendered by them while acting as sheriff, the same fees as are allowed sheriffs for similar services.

For swearing each witness, twenty-five cents.

For taking down testimony, per folio, twenty cents.

OF CONSTABLE.

SEC. 7. For serving summons in a civil suit, for each defendant, seventy-five cents. For summoning a jury before a justice of the peace, two dollars.

For taking a bond required to be taken, seventy-five cents.

For serving an attachment against the property of a defendant, two dollars.

For summoning each witness, twenty-five cents.

For summoning and swearing a jury to try the rights of property, and taking the verdict, two dollars.

For receiving and taking care of property on execution, attachment, or order, his actual necessary expenses, to be allowed by the justice who issued the execution, upon the affidavit of the constable that such charges are correct, and the expenses necessarily incurred.

For collecting all sums on execution, to be charged against the defendant in the execution, two and a half per cent.

Constables shall receive, in serving summons, attachment, order, execution, venire, notice, and subpoena, in civil cases, for each mile necessarily traveled, in going only (but when two or more persons are served in the same suit, mileage shall be only charged for the most distant, if they live in the same direction), forty cents.

For serving a warrant, or order for the delivery of personal property, or making an arrest in civil cases, two dollars.

For service and travel in criminal cases, the same fees as are allowed sheriffs for like services.

For all other services, except for attending court, the same fees as are allowed sheriffs for similar services.

OF WITNESSES.

SEC. 8. For attending in any civil suit or proceeding, before any court of record, referee, commissioner, or justice of the peace, for each day, two dollars.

And for traveling to the place of trial, for each mile, twenty cents.

For attending in any criminal case, or proceeding before the district court, or court of sessions, for each day, two dollars.

And for traveling to the place of trial, for each mile, twenty cents.

No person shall be obliged to testify in a civil action, unless his fees for attendance have been tendered him, or he shall not have demanded the same.

For criminal cases, no witness fees shall be allowed in justices', but in the district court and probate court, witnesses in criminal cases shall be allowed two dollars per day, and twenty cents per mile for traveling, (one way only, from their residence); *provided*, that they reside more than five miles from the county court-house.

OF JURORS.

SEC. 9. For each day, to be paid in civil cases by the party in whose favor the verdict is rendered, before the same shall be entered, but the same may be recovered as cost from the party losing the case, two dollars. If in any trial in a civil case, before any court, the jury be, from any cause, discharged without finding a verdict, the fees of the jury shall be paid by the plaintiff, but may be recovered by the party losing the case, back as costs, if he afterwards obtain judgment; until they are paid no further proceedings shall be allowed in the action. No person shall receive any compensation for serving as a juror on a coroner's inquest.

In the district court and probate court, the clerk shall keep an account of all moneys received for trials by each juror during the term, and if the sum so received by such juror shall not amount to three dollars per day, he shall deliver to such juror a certificate of the time for which he is still entitled to receive pay, which shall be paid out of the county treasury, as other county dues. No fees shall be allowed jurors in criminal cases, except grand jurors and trial jurors in the district court, who may be allowed two dollars per day for each day's actual attendance, and twenty cents per mile from their residence to the county court-house only; *provided*, however, they receive nothing unless they reside more than five miles from said county court-house.

OF COUNTY AUDITOR.

SEC. 10. For making duplicate of taxes, or copies thereof, required, per folio, thirty cents.

For filing treasurer's receipt, and issuing license, to be paid by the party, fifty cents.

The county auditor shall receive for all services rendered by him, in the discharge of the duties imposed on him by law, for each folio, fifty cents.

For services in examining, settling, and adjusting the accounts of the county treasurer, sheriff, assessor, tax collector, or any other revenue officer, upon the days required by law, for each day so employed, fifty cents.

For filing and indorsing each paper, fifty cents.

For all other services, the fees as are allowed the [county] clerk for similar services.

OF JUDGES AND CLERKS OF ELECTIONS.

SEC. 11. For each day's attendance, at any general or special election, the inspector, judges and clerks of the election, shall each receive, to be audited and paid out of the county treasury as other charges against the county, three dollars.

OF JUSTICES OF THE PEACE.

SEC. 12. For filing each paper, twenty-five cents.

For issuing any writ, or process, by which a suit is commenced, seventy-five cents.

For entering cause upon the docket, fifty cents.

For subpoena to each witness, twenty-five cents.

For administering an oath, or affirmation, twenty-five cents.

For certifying the same, twenty-five cents.

For each certificate, twenty-five cents.

For issuing writ of attachment, or arrest, or for the delivery of property, two dollars.

For entering any final judgment, per folio, for the first folio, one dollar.

For each additional folio, twenty cents.

For taking and approving any bond, or undertaking, directed by law to be taken or approved by him, twenty-five cents.

For taking justification to a bond, fifty cents.

For swearing a jury, fifty cents.

For taking depositions, per folio, twenty cents.

For entering satisfaction of judgment, twenty-five cents.

For copy of judgment, order, docket, proceedings, or paper, in his office, for each folio, twenty-five cents.

For transcript of judgment, per folio, twenty-five cents.

For issuing commission to take testimony, one dollar.

For issuing *supersedeas* to an execution, twenty-five cents.

For making up and transmitting, transcript and papers on appeal, two dollars.

For issuing search-warrant, one dollar.

For issuing an execution, twenty-five cents.

For celebrating marriage, and returning certificate thereof to the recorder, five dollars.

For all service and proceedings before a justice of the peace, in a criminal action or proceeding, whether an examination or trial, three dollars.

For taking bail, after commitment, in criminal cases, one dollar.

For entering cause, without process, one dollar.

For entering judgment, by confession, and only on affidavit, as required in the district court, three dollars.

For entering every motion, rule, order, verdict, or default, twenty-five cents.

OF INTERPRETERS AND TRANSLATORS.

SEC. 13. Interpreters and translators may be allowed such compensation for their services as the court shall certify to be necessary and just, to be taxed and collected as other costs; but the same shall not exceed, per day, five dollars.

OF COUNTY SURVEYORS.

SEC. 14. For the first mile actually run with the compass and chain, five dollars.

For each succeeding mile, four dollars.

For each mile run with compass alone, three dollars.

For each lot laid out, and platted, in any city, or town, two dollars.

For each copy of a plat, and certificate, two dollars.

For recording a survey, per folio, twenty cents.

For calculating the quantity of each division, made in a tract of land, town-lots excepted, one dollar.

For traveling to the place of survey, for each mile, in going only, forty cents.

The distance shall be computed from his place of residence, or from where his office is kept, to the place of survey, and if the county surveyor shall be required, and duly notified, verbally, or otherwise, to make other surveys, while in the discharge of his official duty in the field, he shall only be entitled to mileage from the place last surveyed by him, but if the distance shall be greater than the place last surveyed, where his services are required, he shall only be entitled to mileage from the county-seat of the county in which he lives; and in no case shall constructive mileage be allowed.

For ascertaining the location of every town-lot in an old survey, and measuring and marking the same, three dollars.

For copies and certificates, per folio, twenty cents.

For erecting a monument at the corner of any survey, when required, two dollars.

For copy of plat of any survey, and certificate, required by law to be transmitted to the surveyor-general, to be paid by the party requiring the survey, two dollars.

Expenses of assistants shall be an additional charge, to be agreed upon between the parties.

OF TAX COLLECTOR.

SEC. 15. The tax collector shall be allowed, for collecting and paying over all taxes and dues, payable to the territory or

county, on all sums collected and paid over by him, on the first ten thousand dollars, three per cent.

On all over ten thousand dollars, and under twenty thousand dollars, four per cent.

On all over twenty thousand dollars, five per cent.

And for all sums collected and paid over for license-taxes, the same rates as are now allowed by law.

OF PROBATE-JUDGES.

SEC. 16. The probate-judges of the several counties of this territory, shall receive, annually, a stated salary, to be paid out of the county treasuries of their respective counties, to be audited by the board of county commissioners, and paid at the end of each quarter, out of any money in the county treasury, not otherwise appropriated by law, and if not paid on presentation, the same to draw ten per cent. per annum interest, thereafter. In the counties of Storey, Lyon and Ormsby, the sum of fifteen hundred dollars per annum; in the counties of Douglas, Washoe and Esmeralda, the sum of one thousand dollars per annum; in the counties of Lake and Humboldt, the sum of five hundred dollars per annum; and in the county of Churchill, when the same shall have been organized, the sum of five hundred dollars per annum; and no other fees or compensations shall be allowed to the probate-judges, except the salary herein provided.

CHAP. LVIII.—*An Act to Appropriate Moneys from the Territorial Treasury for the Guarding of Prisoners in the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That a sum not to exceed five thousand dollars \$5,000 appropriated is hereby appropriated, out of moneys which may be paid into the territorial treasury, to be expended under the direction of the governor of this territory, for the payment of such necessary expenses as may be incurred, or incident to the guarding of such prisoners as are, or may be, held in custody in any jail, or other place provided or selected for the retention of prisoners in the territory of Nevada.

Duties of territorial auditor and treasurer.

SEC. 2. It shall be the duty of the territorial auditor to draw his warrants on the territorial treasurer, for such amounts as may be certified as correct by the governor aforesaid, not exceeding the amount herein appropriated, and the treasurer of the territory shall pay the same out of any moneys which

may come into said treasury, and not specifically otherwise appropriated by law.

SEC. 3. This act shall take effect immediately.

CHAP. LIX.—*An Act entitled An Act to provide for the Appointment and Prescribe the Duties of Guardians.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The probate judge of each county, when it shall appear necessary or convenient, may appoint guardians to the persons and the estates, or either of them, of minors who have no guardians legally appointed by will, and who are inhabitants or residents in the county, or who shall reside without the territory, and have any estate within the county. Such appointment may be made upon the application by petition of a relative, or any person interested or in befriending such minor. Before making such appointment, the judge shall cause such notice to be given to the relatives of the minor residing in the county, and to any person under whose care such minor may be, as he shall on due inquiry deem responsible. Guardians, how appointed.

SEC. 2. If the minor is under the age of fourteen years, the probate judge may nominate and appoint his guardian; and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly. When minor may nominate.

SEC. 3. If the guardian nominated by the minor shall not be approved by the judge, or if the minor shall reside out of the territory, or if, after being duly cited by the judge, he shall neglect for ten days to nominate a suitable person, the judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years. When judge may appoint.

SEC. 4. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the probate judge. Minor, attaining age of 14, may appoint.

SEC. 5. The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the guardianship of the minor. Parent entitled to guardianship

SEC. 6. If the minor have no father or mother living, and competent to have the custody and care of the education of such Minor having no

parents living. minor, the guardian so appointed shall have the custody and tuition of his ward.

Powers, etc., of guardians. SEC. 7. Every guardian appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of his estate, until such minor shall arrive at the age of twenty-one years, or shall marry; or until the guardian shall be discharged according to law.

Bond of guardian. SEC. 8. Before the order appointing any person guardian under this act, shall take effect, and before letters shall issue, the judge shall require of each person a bond to the minor with sufficient sureties, to be approved by the judge, and in such sum as he shall order, and when the penal sum of the bond exceeds two thousand dollars, each of the sureties may become liable for portions thereof, making in the aggregate the whole penal sum; and said bond shall be conditioned that the guardian shall faithfully execute the duties of his trust according to law. And the following conditions shall be deemed to form a part of such bond without being expressed therein: First. To make a true inventory of all the estate, real and personal, of his ward, that shall come to his possession or knowledge; and to return the same within such time as the judge shall order. Second. To dispose of and manage all such estate according to law, and for the best interest of the ward, and faithfully to discharge his trust in relation thereto; and also in relation to the care, custody and education of the ward. Third. To render an account on oath of the property, estate and moneys of the ward, in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court shall direct; and, Fourth. At the expiration of his trust, to settle his accounts with the probate judge, or with the ward, if he be of full age, or his legal representatives; and to pay over and deliver all the estate, moneys and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto. Upon filing such bond, duly approved letters of guardianship shall issue to the person appointed. In form, the letters of guardianship shall be substantially the same as letters of administration, and the oath of the guardian shall be indorsed thereon, that he will perform the duties of his office as such guardian, according to law.

Estates of deceased persons, act to regulate.

SEC. 9. All the provisions of sections eighty to eighty-nine, inclusive, of the "Act to regulate the Settlement of the Estates of Deceased Persons," are hereby declared to apply to guardians appointed in pursuance of this act, and to the bonds taken, or to be taken, from such guardians, and to the sureties on such bonds.

Minors' maintenance

SEC. 10. If any minor who has a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can

reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable, and shall be directed by the probate court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

SEC. 11. The father of any child who is a minor, may, by his last will and testament, appoint a guardian, or guardians, of such child, whether born before or after the time of making such will, and in case of the death of the father, the mother of such child may, in like manner, appoint a guardian, or guardians, if such child shall not then have any legally appointed guardian; and every testamentary guardian shall give bond and qualify, and shall have the same powers, and perform the same duties, with regard to the person and the estate of such minor, as guardians appointed by the probate court, except as far as the said powers and duties may have been legally modified, enlarged, or changed, by the will by which such guardian was appointed.

Testamentary
guardian.

SEC. 12. Nothing contained in this act shall affect or impair the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein; nor to appoint or allow any person, as the next friend of a minor, to commence and prosecute any suit in his behalf.

Powers of
court to
appoint, not
impaired.

SEC. 13. Whenever it shall be represented to the probate judge, upon petition, under oath, by any relative or friend of any insane person, or of any person who, by reason of extreme old age, or other cause, is mentally incompetent to manage his property, that such person is insane, or mentally incompetent to manage his property, said judge shall cause a notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed; and shall also cause such person, if able to attend, to be produced before him on the hearing.

Guardians,
when incom-
petent.

SEC. 14. If, after a full hearing and examination upon such petition, it shall appear to the probate judge that the person in question is incapable of taking care of himself, and managing his property, he shall appoint a guardian of his person and estate, with the powers and duties herein after specified.

Proceedings
on such
application.

SEC. 15. Every guardian so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward, and the management of all his estate, until such guardian shall be legally discharged; and he shall give bond to such ward, in like manner and with like conditions, as before prescribed with respect to the guardian of a minor.

Powers and
duties of
such guar-
dians

SEC. 16. Every guardian appointed under the provisions of this act, whether for a minor or any other person, shall pay all just debts due from the ward, out of his personal estate,

Debts ag'nst
ward, how.

and the income of his real estate, if sufficient; and if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided by law.

Settlement
of estate.

SEC. 17. Every such guardian shall also settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the probate judge, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward, in all legal suits and proceedings, unless where another person is appointed for that purpose as guardian, or next friend.

Managem't
of estate, by.

SEC. 18. Every guardian shall manage the estate of his ward frugally, and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward, and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward, and his family, if there be any.

Partition of
real estate.

SEC. 19. The guardian may join in and assent to a partition of the real estate of the ward, in the cases and in the manner provided by law.

Inventory
of estate.

SEC. 20. Every guardian shall return to the probate court an inventory of the estate of his ward, within three months after his appointment, and at such other times as the probate court may order, and he shall return to said court such additional inventories whenever any further property belonging to said estate, not included in previous inventories, shall come to his hands; and if there be no estate, he shall return the fact under oath. Each of such inventories shall be sworn to by the guardian, and the property comprised therein shall be appraised by appraisers, who shall be appointed, and shall proceed in the manner provided by laws regulating the settlement of the estates of deceased persons, and when so appraised it shall be recorded by the clerk of the probate court, in a proper book kept in his office for that purpose.

When estate
may be sold.

SEC. 21. When the income of the estate of any person under guardianship, shall not be sufficient to maintain the ward and his family, or to educate his family, or to educate the ward when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor, and proceeding therein as provided in this act.

Same.

SEC. 22. When it shall appear to the satisfaction of the court, upon the petition of the guardian, that it would be for the benefit of his ward, that his real estate, or some portion thereof, should be sold, in order that the proceeds thereof may be put out at interest, or invested in some productive stock, or

in the improvement or security of any other real estate of said ward, his guardian may sell the same for such purpose, upon obtaining an order therefor, and proceeding therein as provided in this act.

SEC. 23. If the estate is sold for the purpose mentioned in the twentieth section of this act, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward. Proceeds,
how applied.

SEC. 24. If the estate is sold for the purpose of putting out or investing the proceeds, as provided in this act, the guardian shall make the investment, according to his best judgment, or in pursuance of any order that may be made by the probate court. Same.

SEC. 25. To obtain an order for such sale, the guardian shall present to the probate court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; which petition shall be verified by the oath of the petitioner. Order for
sale.

SEC. 26. If it shall appear to the court or judge, from such petition, that it is necessary, or would be beneficial to the ward, that such real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or judge shall thereupon make an order, directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it would be necessary, or would be beneficial to the ward, to sell the personal estate, or some part of it, the same proceedings shall thereupon be had in reference to notice of the application, and to ordering a sale, and making such sales as are provided in relation to sales of personal estate by executors or administrators. How
obtained.

SEC. 27. A copy of the order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition; or shall be published at least three successive weeks in some newspaper printed in the county, to be designated by the court or judge; or if there be none printed in the county, then in such newspaper as may be specified by the court or judge in such order. Proceedings
on applicat'n

SEC. 28. The probate court, at the time and place appointed Hearing.

in such order, or such other time as the hearing shall be adjourned to, upon proof of the due service or publication of the order, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin, and all other persons interested in the estate, who shall think proper to oppose the application.

Guardian
may be
examined.

SEC. 29. On such hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the probate judge in the same manner and with like effect as in other cases.

Costs.

SEC. 30. If any person shall appear and object to the granting of any order prayed for under the provisions of this act, and it shall appear to the court that either the petition or the objection thereto is unreasonable, said court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

When order
for sale may
be granted.

SEC. 31. If, after a full examination, it shall appear to the court, either that it is necessary, or would be for the benefit of the ward, that his real estate, or some part of it, should be sold, such court may grant an order therefor, specifying therein for which of the causes, or reasons, mentioned in sections twenty and twenty-one of said act, said sale is necessary or proper; and said court may, if the same has been prayed for in the petition, order such sale to be made, either at public or private sale, upon like proceedings and in the manner as provided by law in case of a sale of real estate by an executor or administrator, and subject to the same proceedings in relation to the confirmation or rejection of the sale, or the re-sale thereof.

To give bond
before sale.

SEC. 32. Every guardian authorized to sell real estate, as aforesaid, shall, before the sale, give bond to the probate judge, with sufficient security to be approved by such judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators; and to account for, and dispose of, the proceeds of the sale in the manner provided by law.

Notice of
sale.

SEC. 33. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as prescribed in the case of a sale of land by an executor or administrator; the same proceedings shall be had as to the return of the sale and the confirmation thereof, and the order to execute a conveyance, as is prescribed in regard to sales of land made by executors or administrators, and the confirmation shall have the same force and effect.

Return, etc.,
of sale.

Order, in
force.

SEC. 34. No order of sale, granted in pursuance of this act, shall be in force more than one year after granting the same.

Limitation of
action for
recovery of
property sold

SEC. 35. No action for the recovery of any estate, sold by a guardian under the provisions of this act, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within three years next after the termination of the

guardianship, excepting only that minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within three years next after the removal of their respective disabilities.

SEC. 36. The guardian shall, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the probate court for settlement and allowance; and all the laws relative to the accounts of executors and administrators shall govern in regard to the accounts of a guardian, so far as they can be made applicable.

Settlement
of guardian.

SEC. 37. The probate court, on the application of a guardian, or of any person interested in the estate of any ward, after such notice to all persons interested therein as the probate judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and also any other money in his hands, in real estate, or in any other manner that shall be most to the interest of all concerned therein; and the said probate court may make such further orders, and give such directions as the case may require, for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Guardian
may invest
proceeds of
sale.

SEC. 38. When any guardian, appointed either by the testator, or by the probate judge, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor; or shall have wasted or mismanaged the estate, the probate judge, after notice to the guardian, may remove him; and every guardian may, upon request, be allowed to resign his trust, when it shall appear, to the probate judge, proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the probate judge may appoint another in his place.

Removal or
resignation.

SEC. 39. The marriage of any person who is under guardianship as a minor, shall terminate such guardianship; and the guardian of any insane person, or other person, may be discharged by the probate judge when it shall appear to him, on the application of the ward, or otherwise, that such guardianship is no longer necessary.

Guardian-
ship, how
terminated.

SEC. 40. The probate judge may require a new bond to be given by any guardian whenever he shall deem it necessary, and may discharge the existing sureties from further liability, after due notice given, as such court may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Required to
renew bonds.

SEC. 41. Every bond given by a guardian shall be filed and preserved in the office of the clerk of the probate court of the county; and in case of the breach of any condition thereof, may be prosecuted in the name of the ward, for the use and benefit of such ward, or of any person interested in the estate.

Bonds to be
filed, where.

SEC. 42. No action shall be maintained against the sureties

Limitation of
action on
guardian
bond.

in any bond given by a guardian, unless it be commenced within three years from the time when the guardian shall have been discharged; *provided*, that if at the time of such discharge, the person entitled to bring such action shall be under any legal disability to sue, the action may be commenced at any time within three years after such disability be removed.

Embezzling
property of
ward.

SEC. 43. Upon complaint made to the probate judge by any guardian, or by the ward, or by any creditor, or by any other person interested in the estate, or by any person having any prospective interest therein as heir, or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or any instrument in writing belonging to the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Non-resident
minors.

SEC. 44. When any minor, or other person liable to be put under guardianship, according to the provisions of this act, shall reside without this territory, and shall have any estate therein, any friend of such person, or any one interested in his estate in expectancy, or otherwise, may apply to the probate judge of any county in which there may be any estate of such absent person, and after notice given to all interested, in such manner as the judge shall order, by publication or otherwise, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

Powers and
duties of
such guar'ns.

SEC. 45. Every guardian appointed under the provisions of the preceding section, shall have the same powers, and perform the same duties, with respect to any estate of the ward that shall be found within this territory, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this act.

Bond.

SEC. 46. Every such guardian shall give bond to the ward, in the manner, and with the like condition, as herein before provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian shall be confined to such estate and such effects as shall come to his hands in this territory.

Guardian-
ship, extent
of.

SEC. 47. The guardianship which shall be first lawfully granted, of any person residing without this territory, shall extend to all the estate of the ward within the same, and shall include the jurisdiction of the probate court of every other county.

Expenses
and com-
pensation.

SEC. 48. Every guardian shall be allowed the amount of his reasonable expenses, incurred in the execution of his trust, and he shall also have such compensation for his services, as

the court, in which his accounts are settled, shall deem to be just and reasonable.

SEC. 49. The court, in its discretion, whenever the same shall appear necessary, may appoint more than one guardian of any person subject to guardianship, who shall give bond, and be governed and liable in all respects as is provided respecting a sole guardian. More than one guardian

SEC. 50. When an account is rendered by two or more joint guardians, the probate judge may, in his discretion, allow the same upon the oath of any of them. Accounts, allowance of.

SEC. 51. All sales of real estate of minor heirs, made for the benefit of said minor heirs, in accordance with the provisions of this act, shall be for cash, or for part cash and part deferred payments, not to exceed three years, bearing date from date of sale, as in the discretion of the probate judge may be most beneficial to said minor heirs. Guardians making the sales aforesaid, shall demand and receive from the purchasers bond and mortgage on the real estate so sold, with such additional security as the judge may deem necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon. Conditions of sales of real estate of minors.

CHAP. LX.—*An Act to provide for Taking the Census, and Apportioning the Representation of the Legislative Assembly of the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. It shall be the duty of the assessor of each county in this territory, at the time he shall be required by law to assess the property of his county, to make a full and complete list of all the white inhabitants in such county, and shall record the name of each in a book or blanks, which shall show their residence, age, and sex, and shall, on or before the first day of July, A. D. eighteen hundred and sixty-two, transmit the same to the governor of the territory. Assessors to take census.

SEC. 2. It shall be the duty of the governor to apportion the number of the members of the legislative assembly, to be elected in each county, according to the number of inhabitants as shown by the returns of the county assessor. Governor to apportion.

SEC. 3. The county assessors shall receive from the county treasurers of their respective counties, such compensation for taking the census, as provided in this act, as the board of county commissioners may direct. Assessors, compensa'n.

CHAP. LXI.—*An Act to Incorporate the Humboldt River Ferry Company.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That Ephraim Spencer and Ephraim Roop, their heirs or assigns, be, and they are hereby authorized to establish and keep a ferry across the Humboldt River, in Humboldt County, at a point where the said ferry is now located, or as near said point as they may determine, within the next six months; and to land and deposit from each shore of said river, on each side thereof, one mile each way; and that the said Ephraim Spencer and Ephraim Roop, their heirs and assigns, to have the exclusive privilege of ferrying in said Humboldt County, within the above limits, for the term of ten years from the passage of this act; *provided*, that said ferry, when so established, shall be subject to the same regulations, and under the same restrictions as other ferries are, or may hereafter be, by the laws of the territory prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for the said Ephraim Spencer and Ephraim Roop, their heirs and assigns, to receive and collect the following rates of toll, for ferriage upon said river:

Rates of toll
 For crossing a foot man, twenty-five cents.
 For crossing a man and horse, fifty cents.
 For crossing a horse and carriage, seventy-five cents.
 For crossing two horses, or oxen and wagon, seventy-five cents.
 For crossing each additional span of horses or oxen, fifty cents.
 For crossing loose stock, other than sheep or hogs, each, twenty-five cents.
 For crossing sheep or hogs, each, twelve and one-half cents.

SEC. 3. That no courts, or board of county commissioners, shall authorize any person, except as hereafter provided in this act, to keep a ferry within the limits set out in this act; *provided*, that the said Ephraim Spencer and Ephraim Roop, their heirs and assigns, shall, within six months after the passage of this act, procure for said ferry a good and sufficient flat-boat, or boats, which shall be kept at said ferry, with sufficient hands to work them, for the transportation of all persons and their property across said river without delay; and should the laws regulating ferries, be violated by said Ephraim Spencer and Ephraim Roop, their heirs and assigns, or, if no good and sufficient boat or boats, with sufficient hands to work them, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of the

county commissioners of Humboldt County, then this act shall be void.

SEC. 4. It shall be lawful for the governor and legislature of this territory, at any future session of such legislature, to alter or change the rates of toll herein provided. Rates of toll may be changed.

SEC. 5. This act to take effect, and be in force from and after its passage.

CHAP. LXII.—*An Act to Create the Gold Hill and Silver City Gas Company.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Seymour Hulburt, and A. De Land, and John Kemble, and their associates and successors, are hereby created and constituted a corporation to be known and designated as the Gold Hill and Silver City Gas Company. Incorporators
Style.

SEC. 2. The said Gold Hill and Silver City Gas Company shall, for and during the period of fifteen years, next ensuing the approval and passage of this act, have and possess the exclusive privilege of supplying the said villages of Gold Hill and Silver City, in said Nevada Territory, and the inhabitants, residents, and people of said Gold Hill and Silver City, with illuminating gas. Exclusive franchise.

SEC. 3. The said company shall have authority to erect, within either of said villages or towns, the necessary buildings, works, and machinery, for the manufacturing or production of illuminating gas, and to make the necessary excavation in the public streets of said villages or towns for the purpose of laying gas-pipes therein, and to re-open said excavations for replacement or repair of said pipes; *provided*, that the streets of said towns or villages shall not be obstructed to an unnecessary degree, or for an unnecessary degree, or for an unnecessary period of time while said pipes are being laid. Powers of.

SEC. 4. The said Gold Hill and Silver City Gas Company shall, within six months from and after the approval of this act, proceed to organize themselves under the general act of incorporation, if any such act shall become a law, and be [then] in force in Nevada Territory, and shall be liable for all the duties and obligations, and subject to all the penalties in such general act of incorporation contained or expressed. To organize.

SEC. 5. That said company shall, within the period of ten months from and after the approval of this act, commence the construction of the works necessary for the manufacture or production of illuminating gas, and shall, within twenty-five Construction and completion of works

months from and after the approval of this act, complete the same.

To supply
Gold Hill,
Silver City
with gas.

SEC. 6. It shall be compulsory on said parties hereby incorporated, to provide each said city of Gold Hill and Silver City, with sufficient gas to supply five (5) burners; such burners, lamps, and lamp-posts, to be provided by the proper authorities for the first year; sufficient gas to supply ten (10) burners, for the second year; and sufficient gas to supply fifteen (15) burners, for each succeeding year thereafter, free of all cost to said cities or towns, otherwise the rights and privileges conferred by this act shall be null and void.

CHAP. LXIII.—*An Act Granting to Certain Parties the Right to Construct a Plank or Turnpike Road from Virginia City to Steamboat Valley.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Incorporators.

Franchise.

Same.

Tolls.

Rates of,
may be
changed.

SECTION 1. That G. W. Huffaker, L. B. Drexley, T. M. Adams, S. G. Sewall, J. Ellis, A. J. Hewett, and D. B. Scott, are hereby created a body corporate, for the purpose of constructing a plank or turnpike road from Virginia City to Steamboat Valley, in the territory of Nevada, starting from Steamboat Valley, and following up a ridge to a point about one and a half miles above said Steamboat Valley, then deflecting to the east, crossing the Washoe range, and traversing the hill-sides below Cedar Hill to Virginia City.

SEC. 2. The above incorporators are hereby granted the right of way on the public domain, two rods wide on each side of said road, exclusive of road-bed, which shall not be less than one rod wide.

SEC. 3. On the completion of said road, the above incorporators are authorized to construct such toll-gates, and collect such toll as they may deem just, or as may hereafter be regulated by a board of county commissioners, in the counties through which said road may be located.

SEC. 4. It shall be lawful for the governor and legislature of this territory, at any future session of such legislature, to regulate, alter or change the rates of toll to be charged on said road.

CHAP. LXIV.—*An Act to Regulate Surveyors and Surveying.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the office of county surveyor be, and hereby is created; and that there shall be a county surveyor, to be elected in each county, by the qualified voters thereof, at the next and every general election, whose term of office shall be one year, and until his successor in office shall be qualified. County surveyor to be elected.

SEC. 2. Each county surveyor, upon entering upon the duties of his office, shall take and subscribe to the oath of office, and give bonds and security to be approved by the probate judge of said county, in the sum of five thousand [\$5,000] dollars. Bond of.

SEC. 3. The county surveyor may appoint deputy-surveyors, who shall severally take and subscribe to the oath of office, and for the faithful performance of whose duties he shall be responsible. Deputies.

SEC. 4. The certificate of the county surveyor, or any of his deputies, shall be submitted as legal evidence in any court of this territory; but the same may be subject to be rebutted by other evidence. Surveys made by the mutual consent of parties, may also be admitted as legal evidence in any court of this territory; *provided*, this section shall not be so construed to exclude the testimony of other surveyors or engineers. Certificate of, to be evidence.

SEC. 5. When it shall appear that the county surveyor is interested in any tract of land, the title of which is in dispute before any court, and a survey of which is necessary, the court shall direct the survey to be made by some capable and disinterested person, who shall return such survey on oath or affirmation, and shall receive for his services the same fees as the county surveyor would be entitled to for similar services. Surveys, when by other persons.

SEC. 6. During a vacancy in the office of county surveyor of any county, the probate judge of such county may appoint some competent person to perform the duties of surveyor until such vacancy shall be filled in the manner prescribed by law. Vacancy.

SEC. 7. It shall be the duty of said county surveyor, either by himself or one of his deputies, to execute any survey that may be required by order of any court, or upon the application of any individual or corporation. Duties of surveyor.

SEC. 8. He shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided by the county for that purpose, which shall be transmitted to his successors in office; he shall also number such surveys progressively, and shall preserve a copy of the field notes and Record of surveys.

calculations of each survey, indorsing thereon its proper number; a copy of which, and also a fair and accurate plat, together with the certificate of survey, shall be furnished by him to any person requiring the same, upon payment of the fees allowed by law.

Surveys,
how ex-
pressed.

SEC. 9. In all surveys the courses shall be expressed according to the true meridian; and the variation of the magnetic meridian from the true meridian shall be expressed on the plat, with the year, month, and day, of the survey.

Copies of
surveys to
surveyor-
general,
recorded.

SEC. 10. Each county surveyor shall, within thirty days after completing any survey, make out a copy of the field notes and plat, and transmit one to the surveyor-general, and give a certificate of such survey to the person for whom it was made, describing the tract, or lot, and number of acres contained; and such certificate, provided the same shall be recorded in the county record within thirty days after the delivery of such certificate, shall be evidence of the title of possession, to the person or persons holding the same.

Neglect of
duties.

SEC. 11. Any county surveyor who shall fail, or refuse, to perform any of the duties required of him by this act, shall be fined, by any court of competent jurisdiction, in a sum not exceeding five hundred dollars.

Fees.

SEC. 12. Each county surveyor shall be allowed such fees as are provided by law.

Survey,
when evi-
dence of
possession.

SEC. 13. Such survey, so made, except in cases of mining claims, shall be evidence of possession for one year from the date of record of such survey.

CHAP. LXV.—*An Act to fix the Time of the Meeting of the Legislative Assembly of the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Hereafter, the legislative assembly of this territory shall convene on the second Tuesday in November, of each year, at the capitol, at the hour of twelve o'clock, M.

CHAP. LXVI.—*An Act relating to a Territorial Prison and Asylum.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The governor, secretary of the territory, and surveyor-general, shall constitute a board of three commissioners, who shall be empowered to lease, purchase, or build, at the expense of the territory, a suitable building, for the use of the territory, as a territorial prison, and such building shall not cost to exceed the sum of ten thousand dollars, if purchased, or built; and to report to the legislative assembly, at its next session, what property, if any, it is advisable to purchase, for a territorial prison. Prison commissioners.

SEC. 2. This act shall take effect immediately.

CHAP. LXVII.—*An Act to authorize the Governor of the Territory of Nevada to have the Boundary line between the State of California and said Territory Surveyed, from Lake Bigler to below Esmeralda.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The governor is hereby authorized and empowered to have the boundary line between the state of California and the territory of Nevada, surveyed and established, from Lake Bigler to below, or south of Esmeralda, at as early a day as practicable. Boundary survey.

SEC. 2. That one thousand dollars is hereby appropriated for that purpose, and the governor is authorized to draw from the treasurer, out of any moneys in the treasury not otherwise appropriated, such sum as may be required for that purpose, not exceeding in amount one thousand dollars. \$1,000 appropriated.

SEC. 3. *And, be it further enacted,* that the above one thousand dollars, in section two, shall not be appropriated, nor the boundary line run, before the first day of May, A. D. eighteen hundred and sixty-two. When appropriated.

SEC. 4. *And, be it further enacted,* that if the state of California shall establish the boundary line before the first day of March, A. D. eighteen hundred and sixty-two, then this act shall be null and void. When void.

SEC. 5. This act shall be in force from and after its passage.

CHAP. LXVIII.—*An Act to audit the claim of Kinkead and Harrington, and to provide for the payment of the same.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

\$495 75
allowed.

SECTION 1. That the claim of Kinkead and Harrington, for rent of court room, for the district court of the first judicial district of said territory, and for stationery, etc., furnished said court, at the request of the judge thereof, and the sheriff of Carson County, amounting to the sum of four hundred and ninety-five dollars and seventy-five cents, be, and the same is hereby audited and allowed as indebtedness against the territory of Nevada.

Issue of
territorial
scrip.

SEC. 2. It shall be the duty of the territorial auditor, as soon as such officer shall have been elected or appointed, to issue to said Kinkead and Harrington, territorial scrip, or evidence of indebtedness, to the amount specified in the first section of this act.

How paid.

SEC. 3. It shall be the duty of the territorial treasurer to pay to the said Kinkead and Harrington, or their assignee, the amount specified in section first of this act, in its regular order of indebtedness, the same as though the claim was against the county of Carson.

CHAP. LXIX.—*An Act for the relief of S. Wasserman and Company.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

\$260 50 ap-
propriated.

SECTION 1. That the sum of two hundred and sixty dollars and fifty cents be, and the same is hereby appropriated, to be paid out of any money in the treasury, not otherwise appropriated, to pay the account of S. Wasserman and Company, for stationery furnished by them for the use of the United States district court for the ——— judicial district of this territory.

SEC. 2. This act shall take effect from and after its passage.

CHAP. LXX.—*An Act Creating the Office, and Defining the Duties of Territorial Treasurer.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The territorial treasurer shall reside and keep his office at the seat of government, and before entering upon the duties of his office, shall execute and deliver to the governor a bond to the territory, in the sum of fifty thousand dollars, to be approved by him, conditioned to pay over all moneys at such times as required of him by law, and for the faithful performance of all duties required by law, and take an oath of office before some judge or justice of the peace within the territory, to be indorsed on his commission, and file a copy thereof, together with his bond, in the office of the secretary of the territory.

Residence:

Bond and oath of.

SEC. 2. It shall be the duty of the territorial treasurer—
First. To receive and keep all moneys of the territory, not expressly required by law to be received and kept by some other person. Second. To disburse the public moneys upon warrants drawn upon the treasury according to law, and not otherwise. Third. To keep a just, true, and comprehensive account of all moneys received and disbursed. Fourth. To keep a just, and true account, under each head of appropriation made by law, and the disbursements under the same. Fifth. To render his accounts to the auditor for settlement quarterly, or oftener if required. Sixth. To report to each house of the legislative assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding year. Seventh. To give information in writing to either house of the legislative assembly, whenever required, upon any subject connected with the treasury, or touching any duty of his office. Eighth. He shall account for, and pay over all moneys received by him as such treasurer, to his successor in office, and deliver all books, vouchers, and effects of office to him, and such successor shall receipt therefor.

Duties of.

Receipts.

Disbursements.

Accounts.

Annual report.

Successor of.

SEC. 3. All the books, papers, letters, and transactions pertaining to the office of treasurer, shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, to examine and settle all accounts, and to count all moneys; and when the successor of any such treasurer shall be elected and qualified, the territorial auditor shall examine and settle all the accounts of such treasurer, remaining unsettled, and give to him a certified statement, showing the balance of moneys, securities, and effects for which he is accountable,

Legislative committee to inspect books of.

and which have been delivered to his successor, and report the same to the legislative assembly.

Receipts of.

SEC. 4. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

To administer oaths.

SEC. 5. The treasurer shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

Official seal.

SEC. 6. The treasurer shall keep a seal of office, for the authentication of all papers, writings, and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents, lawfully deposited in his office, shall be received in evidence as the original documents.

Refusal to pay warrants.

SEC. 7. If the territorial treasurer shall willfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay fourfold the amount, to be recovered by action against the treasurer, and his securities, on his official bond, or otherwise, shall also suffer such other punishment as the law may provide.

Compensation

SEC. 8. The treasurer shall receive as a compensation for his services, two per cent. of all moneys received, and two per cent. on all moneys disbursed by him, in his official capacity, to be audited by the auditor, and retained by said treasurer, from any moneys in the treasury not otherwise appropriated.

CHAP. LXXI.—*An Act to provide for the Filling of Vacancies in Office.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Governor to fill.

SECTION 1. If, from any cause, any territorial, county, or township office, shall be vacant, or shall become vacant, and no mode of filling the same is provided by law, the governor is hereby authorized to fill the same by appointment, until the next election.

CHAP. LXXII.—*An Act establishing a Common School System for the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

ARTICLE I.

SECTION 1. That the principal of all moneys accruing to this territory from the sale of any land heretofore given, or which may hereafter be given by the congress of the United States, for school purposes, together with any moneys that by legacy, or otherwise, may be appropriated to the general school fund, shall constitute an irreducible and indivisible fund, the interest accruing from which, shall be annually divided among all the school districts in the territory, proportionally to the number of children or youth in each, between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever. School fund, what to constitute.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county, to set apart annually ten per cent. of all moneys paid into the county treasury, received as taxes upon the property contained in such county; and the said money so appropriated, shall be paid over to the county treasurer, to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed. Ten per cent. of county taxes to.

SEC. 3. For the further support of common schools, there shall be set apart by the county treasurer, all money paid into the county treasury, arising from all fines for a breach of any penal laws of this territory, if not otherwise appropriated by law; such moneys shall be paid into the county treasury, and be added to the yearly school fund raised by tax in each county, and divided in the same manner. Fines, etc., appropriated to.

ARTICLE II.

SECTION 1. There shall be elected at the first special election in January, one territorial superintendent of public instruction, who shall remain in office, and perform the duties thereof, until his successor shall have been elected and qualified. Territorial superintendent of public instruction.

SEC. 2. It shall be the duty of the superintendent of public instruction, by and with the advice, and subject to, the supervision of the territorial board of education—First. To prepare and publish, in connection with this act, instructions and forms for the direction of the county superintendents, boards, trustees, marshals, and teachers of the common schools, and to distribute to each county superintendent a sufficient number of copies of this act, and of the said instructions and forms, for Duties of.

Apportion-
ment of
school mon-
eys by terri-
torial aud'or.

Annual
report of
territorial
superinten't
of public
instruction.

Expenses of
superinten't
how paid.

School mon-
eys, how
kept and
disbursed.

the supply of the common school officers in the county. Second. By all proper means in his power, to disseminate intelligence among the people in relation to the method and value of education. Third. To exercise a general supervision over such schools as may be established by law in connection with the common school system. Immediately after the territorial auditor has made his semi-annual report, as required, to apportion to the several counties the amount of school moneys in the territorial treasury, to which each shall be entitled under the provisions of this act, in proportion to the number of children residing therein, between the ages of four and twenty-one, as shown by the last previous reports of the county superintendents and school marshals, or other officers, charged therewith, and make a record thereof in the book of records, to be kept by the territorial board of education, and furnish to the territorial auditor, to each county treasurer, and to each county superintendent, an abstract of such apportionment, and, with each apportionment, to furnish to each county treasurer his order on the territorial auditor, under the seal of the territorial board of education, for the amount of school moneys in the territorial treasury to which such county shall be entitled, and to take such county treasurer's receipt for the same. Fourth. To present to the legislature, annually, on or before the tenth day of each session, a full report of the condition of public instruction in the territory, the number and grade of schools in each county; the number of children in each county between the ages of four and twenty-one years; the number of such attending common schools established under the provisions of this act; the amount of school moneys apportioned to each county; the amount of moneys raised and expended by any county, town, city, or school district, for the support of common schools therein, together with such suggestions as he may deem it expedient to make in relation to the construction of school-houses, the improvement and better management of common schools, the qualification of teachers, the ways and means for raising funds for the support of common schools, and providing suitable school-houses, and for the promotion of the general interests of education throughout the territory.

SEC. 3. All necessary expenditures of moneys incurred by the superintendent of public instruction, in the discharge of his official duties, shall be paid out of any fund in the treasury not otherwise appropriated, the amount being duly certified by the territorial board of education, and the territorial auditor is hereby authorized to issue his warrants on the treasurer for the same.

SEC. 4. It shall be the duty of the territorial treasurer to receive and hold as a special deposit, all common school moneys paid into the treasury, and pay them over only on the warrant of the territorial auditor, issued upon the order of the territorial board of education, under the seal of said board, and signed

by the superintendent of public instruction, in favor of the county treasurers; which orders, duly indorsed by the county treasurers, shall be the only valid vouchers in the hands of the territorial auditor for the disbursement of said common school moneys.

SEC. 5. All school moneys due each county in the territory, shall be paid over by the territorial treasurer to the county treasurers on the first day of May and the first day of November of each year, or as soon thereafter as the county treasurers may apply for the same, upon the warrant of the territorial auditor, drawn in conformity with the apportionment of the superintendent of public instruction, as provided for in section second of this chapter [article]; *provided*, however, that no mileage nor allowance, other than the commissions provided for by law, shall be made to any county treasurer for receiving and transporting said money to his county.

How paid
over to
county
treasurer.

SEC. 6. The territorial auditor shall keep a separate and distinct account of the common school fund, and of the interest and income thereof, together with such moneys as shall be raised by territorial tax, or special appropriation, or otherwise, for the support of common schools.

Account of
be kept by
territorial
auditor.

SEC. 7. For the ensuing two fiscal years, there shall be set apart, semi-annually, five per cent. of all moneys received as territorial tax, for school purposes, and such amount shall be distributed *pro rata*, according to the provisions of section second of this chapter [article].

Proportion of
tax for school
purposes.

ARTICLE III.

SECTION 1. The superintendent of public instruction, the territorial auditor, and the territorial treasurer, shall constitute a territorial board of education. The superintendent of public instruction shall be the president, and the auditor shall be the secretary of the board.

Territorial
board of
education.

SEC. 2. The territorial board of education shall have a seal, an impression and description, which shall be deposited by the secretary of the board, in the office of the territorial treasurer, and on and before the first day of November, of each year, the board shall make a full report of all their official acts to the legislature.

Seal, and
annual
report of.

SEC. 3. It shall be the duty of the board of education to perform such other duties as shall be required by law.

Duties of.

ARTICLE IV.—COUNTY SUPERINTENDENTS.

SECTION 1. There shall be elected by the legal voters of the respective counties, at the general elections, a county superintendent of common schools, for each county, who shall hold his office for the term of two years, and until his successor is duly qualified; and at the special election in January, eighteen hundred and sixty-two, said office shall be filled, as provided by law for other county officers, and for the same time.

Election of.

To qualify. SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath faithfully to discharge the duties of his office, and to the best of his ability promote the interest of education within his county, which oath shall be placed on file in the county clerk's office.

Duties of. SEC. 3. It shall be the duty of the superintendent to divide such portion of his county as shall be inhabited, into convenient school districts, to define the boundaries and numbers, and to prepare and keep in his office a map of the districts of the county, upon which the lines and boundaries of each district shall be clearly defined. He shall lay off new districts, or divide old ones, when the public good shall require it.

School districts. SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice, in writing, of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district, who shall have asked for the formation of the same. It shall be the duty of the said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district, of the time and place of the first district meeting, which time and place he shall fix by written notices, which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend, in sufficient numbers, to do business as hereinafter directed, notice may be renewed at such times as may be thought proper.

Notice of establishing new school districts. SEC. 5. It shall be the duty of the superintendent to visit all the schools taught in his county, by a qualified teacher, at least once a year; he shall give such information and encouragement as he may deem necessary, and endeavor to promote the introduction of a good and uniform system of school-books throughout the country.

To visit common schools. SEC. 6. It shall be the duty of the superintendent to receive the district reports, hereinafter provided for, and keep them on file in his office, and he shall, at least ten days before the first day in November, of each year, make out from the district reports, a statement of the number of scholars in the county, the number of school libraries, the number of school-houses, the number of districts, in how many districts a school has been kept in the past year, what school-books are principally used, what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, in his county, he shall forward to the territorial superintendent of public instruction, in order that the same may be embodied in his report to the legislature.

District reports. SEC. 7. It shall be the duty of the county superintendent, at least five days before the first day of December, in each year, to make an apportionment of the school fund in the

County reports.

Apportionment of county school fund.

county treasury, among the several school districts in their respective counties, in proportion to the number of persons in the district between the ages of four and twenty-one, and certify the amount due to each district, which shall be drawn as hereafter directed; and he shall forthwith notify the trustees of the school districts of the amount due their respective districts.

SEC. 8. When the districts shall have complied with the law, as hereinafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the trustees of the districts—for the amount of the school funds appropriated to each, on the presentation of which order, the treasurer of the county shall pay over to the trustees of the districts, all moneys due the respective districts, and the trustees shall indorse, on said order, a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district.

Orders on
county
treasury.

SEC. 9. The superintendent shall, in the name of the county, collect, or cause to be collected, all moneys due the school fund from fines, or from any other source in his county.

Moneys due
school fund.

SEC. 10. The county superintendents shall be allowed, out of the county treasury, in the counties of Storey, Lyon, and Ormsby, the sum of two hundred dollars per year; in all the other counties of the territory, one hundred dollars per year.

Compensa'n.

ARTICLE V.

SECTION 1. A school meeting may be called at any time, for the purpose of organizing a new district, as provided for in section four, under the title of county superintendents. Ten legal voters shall constitute a quorum to transact business.

District
school
meeting,

SEC. 2. Such meetings, when organized, shall proceed to elect three trustees, who shall hold their office for one year, and until their successors are chosen and qualified.

Election of
trustees.

SEC. 3. Trustees shall qualify within ten days after their election, by taking an oath, or affirmation, faithfully to discharge the duties of their office to the best of their ability, and to promote the interest of education within their district, which oath shall be administered by the justice of the peace acting in the township in which the district is located.

Oath of
office.

SEC. 4. It shall be the duty of the trustees to call special meetings of the district whenever they shall deem it necessary, to purchase or lease a site for the district school-house, as may be designated by a meeting of the district, to build, hire, or purchase, and to keep in repair such school-house.

Trustees,
duties of.

SEC. 5. A majority of said trustees shall constitute a quorum to do business.

Quorum.

SEC. 6. It shall be the duty of the trustees to employ teachers to teach in their districts, and they shall be the judges

Teachers.

Fuel. of the qualifications of teachers in their districts. They shall furnish fuel for the school-houses in their districts, and shall have the custody and safe-keeping of the same.

Special tax for fuel. SEC. 7. The trustees may levy a special tax, not to exceed the amount actually required, to furnish fuel for the school-houses for each year.

School roll. SEC. 8. It shall be the duty of every school teacher of a common district school, to keep a separate register of the names of all the children attending school in the different districts to which such scholar or scholars belong, the time when they begin, the time they continue, and their daily attendance, and the branches taught, etc., which register shall be filed with the trustees of the different districts from which children have been in attendance at school.

Trustees to visit. SEC. 9. It shall be the duty of the trustees to visit the school or schools in their districts from time to time; they shall endeavor to procure the introduction of a good and uniform system of school-books in their districts; and when a teacher experiences difficulty in the government of a school, it shall be his duty to report the case of disorderly scholars to the trustees, who shall decide how such scholars shall be punished, or whether they shall be discharged from school.

Teachers, discharge of. SEC. 10. School trustees shall have the power to discharge any school teacher for any neglect of duty, or any cause that, in their opinion, renders his or her services unprofitable as a teacher, by first paying for what time he or she may have been engaged in teaching.

Annual school meeting. SEC. 11. There shall be an annual school meeting held in each district upon the first Friday in November. All annual and special district meetings shall be advertised at least ten days previous to holding such meeting, by posting up notices in three of the most public places in the district.

Census marshal of school districts. SEC. 12. The school trustees of each district shall appoint a census marshal on the first Monday of October, in each year, who shall proceed, immediately after he shall have been appointed, to take, in a book kept for that purpose, a correct enumeration of all the children and youth in his district between the ages of four and twenty-one years, entitled to attend the district school; for such enumeration he shall receive such compensation as may be allowed him by the trustees, and upon presentation of such certificate to the county superintendent, the superintendent shall draw an order on the county treasurer for payment of the same, which shall be paid out of any funds in the county treasury not otherwise appropriated.

Report of. SEC. 13. After the census marshal shall have finished his enumeration, he shall report the same to the trustees of his district, who shall file the same, and report therefrom to the county superintendent in their annual report.

CHAP. LXXIII.—*An Act to create the Carson City Gas Company.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. George Lewis, John J. Musser, and their associates and successors, are hereby created and constituted a corporation, to be known and designated as the Carson City Gas Company. Corporation.

SEC. 2. The said Carson City Gas Company shall, for and during the period of fifteen years next ensuing the approval of this act, have and possess the exclusive privilege of supplying the town of Carson City, in the territory of Nevada, and the inhabitants, residents, and people of said place, with illuminating gas. Franchise.

SEC. 3. The said company shall have authority to erect, within the town limits of Carson City, the necessary buildings, works, and machinery, for the manufacture or production of illuminating gas, to make the necessary excavations in the public streets of said town, for the purpose of laying gas-pipes therein, and to re-open the said excavations for replacement or repair of said pipes; *provided*, that the streets of said city shall not be obstructed to an unnecessary degree, or for an unnecessary period of time, while said pipes are being laid. Powers of.

SEC. 4. The said Carson City Gas Company shall, within six months from and after the approval of this act, proceed to organize [themselves] under the general act of incorporation, if any such act should become a law, and be then in force in Nevada Territory, and shall then be liable for all the duties and obligations, and subject to all the penalties in such general act of incorporation contained and expressed. Organization of.

SEC. 5. The said company shall, within the period of nine months from and after the approval of this act, commence the construction of the works necessary for the manufacture or production of illuminating gas, and shall, within the period of two years from and after the approval of this act, complete the same. Commencement and completion of works.

SEC. 6. After the said gas works shall have gone into operation, the said company shall furnish the town of Carson, free of charge, the first year, five lights, the second year, ten lights, and thereafter fifteen lights, and which said lights shall be furnished at such places as may be directed by the authorities or people of said town, the lamps, burners, and lamp-posts to be provided by the proper authorities. To furnish gas to city gratis.

CHAP. LXXIV.—*An Act to Audit the Claims of the Judges, Inspectors, and Clerks of the last Election, and to provide for the Payment of the same.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Five dollars
per diem ap-
propriated.

SECTION 1. That the auditor of the territory of Nevada be, and is hereby authorized to issue his warrants to the judges, inspectors and clerks of the last election, at the rate of five dollars per day each, for their services at said election, and three dollars for every twenty miles traveled by the messenger in delivering the poll-books of said election to the secretary of the territory, and that said warrants be paid out of any territorial funds in the hands of the treasurer not otherwise appropriated.

SEC. 2. This act shall take effect from and after its passage.

CHAP. LXXV.—*An Act creating the Office, and defining the Duties of Territorial Auditor.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Residence,
office, and
bond.

SECTION 1. The territorial auditor shall reside and keep his office at the seat of government, and before entering upon his duties, shall execute and deliver to the governor, a bond to the territory, in the sum of five thousand dollars, to be approved by him, conditioned for the faithful performance of all duties required, or which may be required of him by law, and take an oath of office before some judge, or justice of the peace, within the territory, to be indorsed on his commission, and file a copy thereof, together with his bond, in the office of the secretary of the territory.

To be gen-
eral account-
ant of
territory.

SEC. 2. The auditor of public accounts is declared to be the general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue, debt, and fiscal affairs, not required by law to be placed in some other office, or kept by some other person.

Annual
report of to
legislature,
what to
contain.

SEC. 3. It shall be the duty of the auditor, to digest, prepare and report to the legislative assembly, at the commencement of each annual session—First. A full and detailed statement of the condition of the revenues, and the amount of the

expenditures for the fiscal last year. Second. A full and detailed statement of the public debt. Third. Estimates of the revenue and expenditures for the next succeeding year. Fourth. Such plans as he may deem expedient for the support of public credit, for lessening the public expenses, for using the public money to the best advantage, for promoting frugality and economy in public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the territory. Fifth. A tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount [paid] under the same, and the balance unexpended. Sixth. A tabular statement, showing separately the amount of money received into the treasury, from all sources, in the preceding fiscal year, the amount received from each county, and each source of revenue in each county.

SEC. 4. It shall be the duty of the auditor—First. To audit, adjust, and settle all claims against the territory, payable out of the treasury, except, only, such claims as may be expressly required by law to be audited and settled by other officers or persons. Second. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law. Third. To express, in the body of every warrant which he may draw upon the treasury, the particular fund appropriated by law out of which the same is to be paid. Fourth. To audit, settle, and adjust the accounts of all collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury. Fifth. To keep an account between the territory and the territorial treasurer. Sixth. To keep an account of all debts and credits between the territory and the United States. Seventh. To direct prosecutions in the name of the territory for all official delinquencies in relation to the assessment, collection, and payment of the revenue, against all persons who, by any means, become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the territory. Eighth. To procure, from the proper officers, an abstract and description of all taxable lands within the territory, not yet procured, and annually, hereafter, abstracts and descriptions of such lands as shall become taxable. Ninth. To transmit to the clerk of each county commissioner's court, annually, a descriptive list of all taxable lands in such county. Tenth. To give information in writing to either house of the legislative assembly, whenever required, upon any subject relating to the fiscal affairs of the territory, or touching any duty of his office. Eleventh. To furnish offices for himself and the territorial treasurer, and all books, papers, blanks, and forms, required by law for the proper discharge of the duties of their offices, and to furnish the proper forms, through the auditors of the counties, to assessors, treasurers, sheriffs, and such auditors. Twelfth. To perform all such other duties as may be required by law.

Time for
payment of
money to
territorial
treasury.

SEC. 5. All persons required by law to pay money directly into the treasury of the territory, shall, unless otherwise provided, exhibit their accounts and vouchers to the auditor on or before the first Monday in November, in each year, to be audited, adjusted, and settled; and the auditor shall proceed, without any unnecessary delay, to audit, adjust, and settle the same, and report to the treasurer the balance found due.

Penalty for
non-pay-
ment.

SEC. 6. If any person so required by law to pay money into such treasury, shall fail to pay the amount so found due into the treasury, and produce the treasurer's receipt to the auditor, within ten days after the settlement above required, the delinquent shall forfeit to the territory the amount of his commission allowed him by law, and also two and one half per cent. a month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment; and the auditor shall charge such delinquent accordingly, and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent, or otherwise, according to law.

Claims
against
territory.

SEC. 7. All persons having claims against the territory, shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed within two years after such claims shall accrue, and not afterwards. And in all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory, as a set-off, but such as have been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved, to the satisfaction of the court, that the defendant, at the time of trial, is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor by absence from the territory, sickness, or unavoidable accident; *provided*, the auditor shall, in no case, audit a claim or set-off which is not provided for by law.

May exam-
ine relative
to claims.

SEC. 8. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses, and others, on oath, or affirmation, touching any matter material to be known in the settlement of such account, and for that purpose may issue writs of summons and compel witnesses to attend before him and give evidence, in the same manner, and by the same means, allowed by law to courts of record.

Documents
to be pre-
sented.

SEC. 9. All accounts, vouchers, and documents, settled or to be settled by the auditor, shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein, who shall require the same.

Warrants,
when drawn

SEC. 10. In all cases of grants, salaries, pay, and expenses, ascertained and allowed by law, found due to individuals, from the territory, when audited, the auditor shall draw warrants upon the treasury for the amount, in the form used in the

treasury department; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrant shall be drawn by the auditor, or paid by the treasurer, unless the previous appropriation shall have been made, by law, for that purpose; nor shall the whole amount drawn for and paid under any one head, ever exceed the amount thus appropriated.

When not drawn.

SEC. 11. If any person interested shall be dissatisfied with the decision of the auditor, on any claim, account, or credit, it shall be the duty of the auditor, at the request of such person, to refer the same, with the reasons of his decision, to the legislative assembly.

Claims referred to legislative assembly.

SEC. 12. In all cases where the laws recognize a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit and settle the same, and give the claimant a certificate of the amount thereof, under the official seal, if demanded, and shall report the same to the legislative assembly, with as little delay as possible.

Claims recognized by law to be audited.

SEC. 13. The auditor shall report to the legislative assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled, according to law, and the reasons thereof.

Reports of delinquent tax collectors

SEC. 14. The auditor shall receive an annual salary of fifteen hundred dollars, to be audited by the territorial treasurer, and paid by him out of any moneys in the treasury not otherwise appropriated.

Salary.

SEC. 15. All the books, papers, letters, and transactions, pertaining to the office of auditor, shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, who shall examine and settle all the auditor's accounts.

Books, etc., to be inspected.

SEC. 16. The auditor shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

To administer oaths.

SEC. 17. The auditor shall keep a seal of office, for the authentication of all papers, writings, and documents, required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

Official seal.

SEC. 18. This act shall go into effect on and after the second day of December, eighteen hundred and sixty-one.

CHAP. LXXVI.—*An Act to increase the Representation of the Legislative Assembly of the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Number.

SECTION 1. Hereafter the council of the legislative assembly shall consist of thirteen members, and the house of representatives shall consist of twenty-six members, as provided in section four of an act of congress, entitled "An Act to Organize the Territory of Nevada," approved March second, A. D. eighteen hundred and sixty-one.

CHAP. LXXVII.—*An Act increasing the Salaries of certain Attachees of the Legislative Assembly.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Increase.

SECTION 1. The chief clerk of the house shall receive, out of the territorial treasury, the sum of five dollars *per diem*; the assistant, four dollars *per diem*; the sergeant-at-arms and messenger of each house, each three dollars *per diem*; and the pages of each house, each two dollars *per diem* for the session; and A. W. Oliver and C. T. Rice, each the sum of three dollars *per diem* for the session, for copying and reporting for the respective houses; also, to the engrossing clerk of the house, eight dollars *per diem*.

When and how paid.

SEC. 2. The above remuneration shall be paid to the persons above named by the territorial treasurer, out of any moneys in the treasury not otherwise appropriated.

SEC. 3. The sums herein before directed to be paid, shall only be paid on the presentation of the certificate of the speaker and clerk of the house, or the president and secretary of the council, as the case may be.

SEC. 4. This act shall take effect from and after its passage.

CHAP. LXXVIII.—*An Act to audit the claim of P. H. Clayton, and to provide for the payment of the same.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the claim of P. H. Clayton, as district attorney for the second judicial district of Utah, for official services rendered, and fees in criminal cases, up to April the ninth, A. D. eighteen hundred and sixty-one, amounting to the sum of six hundred and sixty-nine dollars, be, and the same is hereby audited and allowed as indebtedness against the territory of Nevada. \$669 00
allowed.

SEC. 2. It shall be the duty of the territorial auditor, as soon as such officer shall have been elected or appointed, to issue to the said P. H. Clayton, territorial scrip, or evidence of indebtedness, to the amount specified in section first of this act. Auditor to
issue scrip.

SEC. 3. It shall be the duty of the territorial treasurer to pay to the said P. H. Clayton, or his assignee, the amount specified in section first of this act, in its regular order of indebtedness, the same as though the claim was against the county of Carson, before said county was included in the territory of Nevada. Treasurer
to pay.

SEC. 4. Before the scrip, or evidence of indebtedness, as provided for in this act, shall be issued, the said P. H. Clayton shall be required to surrender all unpaid warrants, issued to him by a body styling themselves the "County Court of Carson County," and shall sign a receipt for all accounts against the territory of Nevada, and the county of Carson; and all warrants and evidences of indebtedness heretofore issued to the said P. H. Clayton, shall then be declared void. Surrender
of unpaid
warrants.

CHAP. LXXIX.—*An Act relative to Public Records.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the books of records now in the possession of the recorder of the county of Carson, upon the organization of the several counties of this territory, by the election and qualification of recorders and other officers therein, shall be delivered to the secretary of the territory, to be safely preserved by him as public records of the territory. Secretary of
territory,
Carson Co.
records to be
delivered to.

Copies of records.

SEC. 2. That on the request of a legally qualified recorder of any county within this territory, the secretary of the territory shall cause a true copy of all records in his office properly belonging to the county represented by such recorder, to be made, and certified to by him under oath.

To be furnished new counties.

SEC. 3. That any county desiring a transcript of the records properly belonging to such county, shall furnish the secretary of the territory with suitable blank record books to contain such records, and the secretary shall receive from the territory, as compensation for all records so transcribed, fifteen cents per folio of one hundred words.

CHAP. LXXX.—*An Act in relation to County Treasurers.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

To be elected

SECTION 1. That at the first election in each county, and every two years thereafter, there shall be elected a county treasurer, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified.

Oath of office, bond, etc.

SEC. 2. The county treasurer, before he enters on the duties of his office, shall take the oath faithfully to discharge the duties of his office, as prescribed by law; he shall also, before he enters upon the duties of his office, give a bond to the county, with at least two sureties residing in the county, in a penal sum of not less than double the amount of funds liable to come into the hands of the said treasurer during his term of office, the amount to be fixed, and the bond to be approved by the county commissioners of the proper county, conditioned that all moneys received by him for the use of the county shall be paid, as the commissioners shall, from time to time, direct, except, where special provision is made by law for the payment of such moneys, by order of any court or otherwise, and for the faithful discharge of his duties.

Receipts and disbursements.

SEC. 3. He shall receive all moneys due and accruing to his county, and disburse the same, on the proper orders issued and attested by the county auditor.

Deputies.

SEC. 4. County treasurers may appoint one or more deputies, and may take from them bond with sureties; they shall have power to remove their deputies at pleasure, and every county treasurer and his sureties shall be liable for every official act of his deputies.

SEC. 5. The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for transaction of business during business hours; and he, and his deputies, are authorized to administer all oaths necessary in the discharge of the duties of his office. Office, location and hours of.

SEC. 6. He shall so arrange and keep his books, that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account. Accounts.

SEC. 7. He shall, at all times, keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board, at least once a year, and as often as such board may require. Books, etc. subject to inspection.

SEC. 8. He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order the date of redemption and his signature. If there be no funds to pay such order when presented, he shall indorse thereon—"not paid for want of funds," and the date of such indorsement over his signature, which shall entitle such order thenceforth to draw legal interest; *provided*, that such interest shall cease from the date of notice by publication in some newspaper printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case, and if there be no such newspaper, then by posting such notice at three public places in such county. To pay orders.

SEC. 9. When the county treasurer shall redeem any order on which interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest distinct from the principal. Order and interest redeemed.

SEC. 10. County orders shall be redeemed by the treasurer according to the priority of the time of presentment; *provided*, such orders payable out of the county revenue shall be received in payment of county taxes, without any regard to the priority of presentment, or number; but such treasurer shall not pay any balance thereon over and above such tax, when there are outstanding orders unpaid for want of funds. How redeemed.

SEC. 11. The treasurer shall, on the first Monday in September, in each year, deposit with the county auditor all county orders redeemed, who shall receipt therefor. Where deposited.

SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed by the board of county commissioners of his county. Removal of treasurer.

SEC. 13. The county treasurer shall annually make complete settlements with the board of county commissioners, at the regular September term thereof, and shall, at the expiration of Annual settlements.

his term of office, deliver to his successor all public moneys, books, and papers in his possession.

Compensat'n

SEC. 14. The county treasurer shall receive, as a compensation for his services, two per cent. on all moneys received, and two per cent. on all moneys paid out by him for the county.

CHAP. LXXXI.—*An Act for the Relief of David M. Hanson.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

\$750 00
appropriated

SECTION 1. That the sum of seven hundred and fifty dollars be, and the same is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated, to pay the account of David M. Hanson, for services rendered as the clerk of the United States district court in and for the first judicial district.

SEC. 2. This act shall take effect from and after its passage.

CHAP. LXXXII.—*An Act concerning Officers.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Justice of
peace, oath
and bond of.

SECTION 1. Each justice of the peace in this territory shall, before entering upon the duties of his office, take the oath prescribed by law, and execute a bond to the county, to be approved by the probate judge, in the penal sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office, which bond shall be filed in the county clerk's office.

To be
conservators
of peace.

SEC. 2. The justices shall be conservators of the peace in their respective townships, and shall discharge such duties as may be prescribed by law.

County clerk
oath and
bond of.

SEC. 3. Each county clerk shall, before entering upon the duties of his office, take the oath prescribed by law, and execute to the county a penal bond, in the sum of ten thousand dollars, conditional for the faithful discharge of the duties of his office, which bond shall be approved by the probate judge, and filed in the office of the county recorder.

SEC. 4. The county clerk shall perform such duties as clerk of the probate court, clerk of the board of county commissioners, and county auditor, as required by law, and shall discharge such other duties as may be prescribed by law. Additional duties of.

SEC. 5. Each constable in this territory shall, before entering upon the duties of his office, take the oath prescribed by law, and execute a penal bond to the county, in the sum of three thousand dollars, conditioned for the faithful discharge of his duties, to be approved by the probate judge, and filed in the office of the county clerk. Constables, oath and bond of.

SEC. 6. Each constable shall be a peace officer in his township, and shall serve all mesne and final process issued by a justice of the peace, and shall discharge such other duties as are or may be prescribed by law. To be peace officer.

CHAP. LXXXIII.—*An Act defining the Judicial Districts, fixing the Terms of the Supreme and District Courts of the Territory, locating the County-Seats of the several Counties of the Territory, and providing for the Transfer and Trial of Actions.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. This territory is hereby divided into three judicial districts, as follows: The first judicial district shall embrace the counties of Storey, Washoe, and Lake; the second judicial district, shall embrace the counties of Ormsby, Douglas, and Esmeralda; the third judicial district, shall embrace the counties of Lyon, Churchill, and Humboldt. Judicial districts.
First.
Second.
Third.

SEC. 2. The Hon. Gordon N. Mott, associate justice of the supreme court, is hereby assigned to the first judicial district; the Hon. George Turner, chief justice of the supreme court, is hereby assigned to the second judicial district; and the Hon. Horatio M. Jones, associate justice of the supreme court, is hereby assigned to the third judicial district. Assignments

SEC. 3. There shall be a term of the supreme court of this territory, held at the territorial seat of government annually, commencing on the first Monday of June, and such term may be adjourned from time to time as said supreme court may order and direct, by an entry made in the records of said court. Term of supreme court.

SEC. 4. The terms of the first judicial district court shall commence annually, at the county-seats of the respective counties, as follows: In the county of Storey, on the first Monday of February, the first Monday of May, and the first

Monday of September; in the county of Washoe, on the third Monday of March, and the third Monday of November; in the county of Lake, on the third Monday of July, and second Monday of January.

Terms of second district court.

SEC. 5. The terms of the second judicial district court shall commence, annually, at the county-seats of the several counties of the district, as follows: In the county of Ormsby, on the first Monday of January, on the first Monday of April, on the first Monday of August, and on the first Monday of November. In the county of Douglas, on the third Monday of February, and on the first Monday of July. In the county of Esmeralda, on the first Mondays of May and October.

Third district court, terms of.

SEC. 6. The terms of the third judicial district court shall commence, annually, at the county-seats of the several counties of the district, as follows: In the county of Lyon, on the first Mondays of March, July and October, and in the county of Humboldt, on the third Mondays of April and August. The county of Churchill is hereby attached to the county of Lyon for judicial, county, and revenue purposes.

May be continued.

SEC. 7. The terms of the district courts herein provided for may continue until the term of the supreme court, as herein before provided, or such time to which such supreme court may stand adjourned by the order of said supreme court, or until the time provided for the commencement of a term of such district court in some other county in the same district, unless the business of such district court for the county shall have been sooner disposed of.

Sheriff may adjourn district courts.

SEC. 8. If, at any time provided by law for the commencement of any term of the district court, and there should be any cases on the calendar of such court, and, from any cause, the judge of said court, or some other judge lawfully authorized to hold such court, shall, on such day appointed, fail to appear to hold such term, it shall be lawful for the sheriff of the county to adjourn such court, from day to day, for a time not exceeding four days, and if such judge should appear within the last mentioned time, and hold such term, the same shall be lawful.

Civil actions transferred.

SEC. 9. All civil actions of a local character now pending in the district court of this territory, are hereby transferred to the district court of the county where the cause of action arose, or where the subject matter of the action is situated. All other civil actions now pending in the district court of this territory, are hereby transferred to the district court of the county where such actions were commenced, subject to the power of the court for legal cause, or, by consent of parties, to change the place of trial.

Criminal actions transferred.

SEC. 10. All criminal actions now pending in the district court of this territory, are hereby transferred to the district court of the second judicial district, in and for the county of Ormsby, and the said district court shall have as full jurisdic-

tion and authority over such actions, as if the same had been originally commenced therein; and the said district court of the second judicial district, in and for the county of Ormsby, shall also have full jurisdiction of all public offenses committed in this territory prior to the complete organization of the several counties of this territory, by the election or appointment and qualification of the officers therein.

SEC. 11. All the expenses and costs hereafter incurred in the prosecution of offenses committed prior to the complete organization of the territorial and county governments, by the election or appointment of officers therein, shall be, and are, hereby declared to be a territorial charge, and the governor, auditor, and treasurer of the territory, are hereby created a board of examiners, who shall examine into, and allow such claims, and for such amounts as they may deem proper and just; and by certifying such claims so allowed to the auditor of the territory, he shall draw his warrant upon the treasurer of the territory, who shall pay the same out of any money which may come into the territorial treasury not specifically otherwise appropriated by law.

Certain expenses and costs to be territorial charge.

SEC. 12. The validity or sufficiency of any legal proceeding, process, or order, heretofore had or issued by any court or officer of this territory, shall be determined by the laws which were in force at the time such proceeding, process or order was had or performed, notwithstanding the repeal of any law regulating the same.

Proceedings, sufficiency how determined.

SEC. 13. When one county is joined to another for judicial purposes, the two counties so joined shall be treated as one county so far as all business pertaining to the district and probate courts are affected; in all other respects such counties shall be treated as distinct organizations.

Counties joined for judicial purposes.

SEC. 14. The county-seats of the counties of this territory, are hereby located as follows: In the county of Esmeralda, at Aurora; in the county of Douglas, at Genoa; in the county of Ormsby, at Carson City; in the county of Washoe, at Washoe City; in the county of Storey, at Virginia City; in the county of Churchill, at Buckland's; in the county of Humboldt, at Unionville; in the county of Lake, at such point as shall be decided by a vote of a majority of the voters of said county, at the first election to be held therein; and in the county of Lyon, at Dayton.

County-seats

CHAP. LXXXIV.—*An Act to Change the Name of Calvin Smith.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Change.

SECTION 1. The name of Calvin Smith, of Virginia City, Storey County, Nevada Territory, is hereby changed to that of Calvin Smith Babbitt.

SEC. 2. This act shall take effect on and after the second day of December, A. D. eighteen hundred and sixty-one.

CHAP. LXXXV.—*An Act to Grant the Right to Construct a Toll Road from Virginia City to Truckee Meadows, and Steamboat Valley, in Storey and Washoe Counties.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Corporators.

Franchise.

SECTION 1. D. M. Geiger and J. H. Tilton, shall take, have, possess and enjoy all the rights, privileges, franchises and rights of way, and full power to build, construct and maintain a public toll road. Said road to commence at a point where the Hennes Pass road terminates on Truckee Meadows, taking a direction nearly east-south-east, crossing Steamboat Creek at the lower end of Steamboat Valley; thence, in the same direction, across the ridge east of said valley, to the springs on the east side of said dividing ridge; thence, in nearly a south direction, to Virginia City; also, a branch leaving said road about two miles north of Virginia City, and running down through Everett's Cañon to the upper end of Steamboat Valley; and shall have the exclusive right of way fifty feet on each side of said road, and said branch between said points of beginning and terminus of said roads and said branch, which is hereby granted and ceded to said parties for the term of ten years; *provided*, that in eight months from the date of the passage of this act, the said parties shall have said road and branch open for public travel; otherwise the right to construct the same shall be forfeited, and this act become null and void. Said parties at all times after the completion of said road and branch, shall keep them in passable order for the public travel, and shall be responsible for any damage awarded by a court of proper

jurisdiction, which shall occur on account of the failure of said parties to keep said roads in proper repair. After the expiration of five years from the completion of said roads, the counties through which they run shall have the right to purchase said road at an appraised value, to be determined by five appraisers, two to be selected by the owners of said roads, two by the county commissioners of the respective counties, and the fifth one to be chosen by the four appraisers before appointed. County right to purchase.

SEC. 2. Said parties shall be entitled to collect on said roads a sum to be fixed by the county commissioners of the county in which the toll-house is situated, which shall not be reduced below twenty-five per cent. per annum, upon the cost of said roads, and the stock traveling over said roads shall be responsible for tolls chargeable against them, and the said commissioners shall open the gates of said road, if said road is not kept in good repair. Tolls.

SEC. 3. Said parties shall keep posted up at each toll-house or gate on said roads, a bulletin-board, with the rates of toll thereon. Bulletin-board of.

SEC. 4. It shall be lawful for the governor and legislature of this territory, at any future session of such legislature, to regulate, alter, or change the rates of toll to be charged on said road. Rates of, may be changed.

SEC. 5. This act shall take effect and be in force from and after its passage.

CHAP. LXXXVI.—*An Act to provide for the Publication of the Laws of Nevada Territory.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The Silver Age Association is hereby authorized to publish in their daily paper, published at Carson City, all the laws passed by the first session of the legislative assembly of the territory of Nevada. Each act to have but one insertion in such paper; and all laws of a general character shall be published first, and such order of publication shall be designated by the governor. Silver Age Association authorized to publish.

SEC. 2. It shall be the duty of the Age Association to furnish a copy of each number of such daily paper, containing such laws, to the governor, secretary of the territory, United States attorney and surveyor-general, justices of the supreme court, each member of the council and house of representatives, clerk of the supreme and each district court, sheriff of each Duty of Association.

county, clerk of each county, district attorney of each district, probate judge of each county, each justice of the peace in the territory, and all the enrolled attorneys of the territory, free of all charge.

Compensat'n SEC. 3. Such association, as mentioned in section first of this act, shall receive for compensation for such publication the sum of fifteen hundred dollars, to be paid out of any funds in the territorial treasury not otherwise appropriated, and it is hereby made the duty of the territorial auditor to draw his warrant upon the treasurer for such amount, upon the completion of such publication.

Acts published to be evidence. SEC. 4. All acts published in said paper may be read in evidence from the paper in which it may be contained, in all courts of justice in this territory, and in proceedings before any officer, body or board, until the first day of March next; *provided*, this act is passed upon the express condition that said Age Association shall publish not less than five columns per day; all to be printed on the same side of the sheet each day.

SEC. 5. This act shall take effect from and after its passage.

CHAP. LXXXVII.—*An Act Relative to the Printing of the Session Laws and Legislative Assembly Journals.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows;

To print in California. SECTION 1. For the purpose of securing the early printing and distribution of laws and journals of the legislative assembly, the secretary of the territory is hereby authorized and required to contract with one or more printing establishments in the state of California, for the printing of said laws and journals, and, further, he shall make all necessary arrangements for furnishing correct manuscript copies of said laws and journals to the printers, and having the proofs of the same read.

CHAP. LXXXVIII.—*An Act to Provide a Seal for the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the design of such seal shall be as follows: Mountains, with a stream of water coursing down their sides, and falling on the over-shot wheel of a quartz-mill at their base; a miner leaning on his pick, and upholding a United States flag, with a motto expressing the two ideas of loyalty to the Union, and the wealth to sustain it. "*Volens et Potens.*" Design of.

SEC. 2. *And, be it further enacted,* That the secretary of the territory be, and he is hereby appointed to have general supervision of the preparation of the design and the cutting of the seal, which shall be a counter-die seal, and the expenses shall not exceed one hundred dollars. Secretary of territory to supervise.

SEC. 3. That the treasurer of the territory shall pay for said seal out of the first unappropriated money in the treasury. How paid for.

SEC. 4. This act shall take effect from and after its passage.

CHAP. LXXXIX.—*An Act Creating Offices in the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. There shall be elected or appointed, as hereinafter declared, the following officers, to wit: First. One territorial treasurer. Territorial. Second. One territorial auditor, who shall be *ex officio* librarian. Third. One territorial superintendent of public instruction. Fourth. One delegate to congress. Fifth. Members of the council. Sixth. Members of the house of representatives. Seventh. One attorney for each judicial district. Eighth. For each county, one county clerk, whose duty it shall be to act as clerk of the probate court, and clerk of the board of county commissioners, and who shall be also *ex officio* auditor; one sheriff; one tax collector; one assessor; one treasurer; one recorder; one county surveyor; one county school-superintendent, and three county commissioners. For each township, one justice of the peace, who shall be *ex officio* coroner in his district or township; one constable. The district attorneys and probate judges shall be nominated by the gov- County. Township. District at-
torneys and

probate
judges ap-
pointed.

ernor, and confirmed by the legislative council; such district attorneys and probate judges shall hold their offices for two years, unless otherwise provided by law, or until their successors be appointed and qualified, if not sooner removed by the governor for cause published and filed in the office of the secretary of the territory. At every general election there shall be elected in each road district, by the qualified voters thereof, one road supervisor.

Road
supervisors.

Officers to
be elected.

SEC. 2. One delegate to congress shall be elected by the qualified electors of the territory. Members of the council and house of representatives, county clerk, sheriff, county assessor, county treasurer, county recorder, and county surveyor, shall be elected by the qualified electors of their respective districts or counties. Justices of the peace and constables, shall be elected by the qualified electors of their respective townships.

Officers
appointed.

SEC. 3. The territorial treasurer, auditor, and superintendent of public instruction, shall be appointed by the governor, and confirmed by the legislative council, and shall hold their respective offices for the term of two years, and until their successors shall be appointed and qualified.

Members of
council.

SEC. 4. Members of the council shall be chosen by the qualified electors of their respective districts, at the general election, as by law provided for the year eighteen hundred and sixty three, and shall hold their office for the term of two years.

Term.

Of house of
representa-
tives.

SEC. 5. Members of the house of representatives shall be chosen by the qualified electors of their respective districts, at the general election, as by law provided, and shall hold their office for the term of one year.

Term.

County
officers.

SEC. 6. County clerks, sheriffs, assessors, county treasurers, county recorders, and county surveyors, shall be chosen by the qualified electors of their respective counties, at the general election, as by law provided, and shall hold their respective offices for the respective term of two years, unless otherwise provided by law, and until their successors shall have been elected and qualified.

Term of.

Township
officers.

SEC. 7. Justices of the peace, and constables, shall be chosen by the qualified electors of their respective districts or townships, at the general election, as by law provided, and shall hold their respective offices for the term of one year, unless otherwise provided by law, and until their successors shall have been elected and qualified.

Term of.

Notaries
public.

SEC. 8. The governor may appoint notaries public, who shall hold their offices during the pleasure of the executive.

CHAP. XC.—*An Act to Audit the Claim of E. C. Dixon, and to provide for the Payment of the same.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the claim of E. C. Dixon, as justice of the peace for the third district, in and for the county of Carson, Nevada Territory, for official services rendered, and fees in criminal cases up to October twelfth, A. D. eighteen hundred and sixty-one, amounting to the sum of ninety four dollars and fifty cents, be, and the same is hereby audited and allowed, as indebtedness against the territory of Nevada. \$94 50
allowed.

SEC. 2. The territorial auditor, so soon as he may be appointed [or elected, as the case may be], and qualified, is hereby directed to draw his warrant upon the territorial treasurer of said territory, in favor of E. C. Dixon, for the payment of the same; and the said warrant, when so drawn and issued as aforesaid, shall be considered payment in full of the said claim against the county of Carson, and the territory of Nevada, up to the time aforesaid. How paid.

CHAP. XCI.—*An Act to Audit the Claim of Adolphus Waitz, and to provide for the Payment of the same.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the claim of Adolphus Waitz, as constable for the third district, in and for the county of Carson, Nevada Territory, for official services rendered, and fees in criminal cases, up to October twelfth, A. D. eighteen hundred and sixty-one, amounting to the sum of two hundred and ninety-five and forty one-hundredths dollars (\$295 40), be, and the same is hereby audited and allowed as indebtedness against the territory of Nevada. \$295 40
allowed.

SEC. 2. The territorial auditor, so soon as he may be appointed, or elected [as the case may be], and qualified, is hereby directed to draw his warrant upon the territorial treasurer of said territory, in favor of Adolphus Waitz, for the payment of the same; and the said warrant, when so drawn and issued as aforesaid, shall be considered payment in full of said claim against the county of Carson, and the territory of Nevada, up to the date aforesaid. How paid.

CHAP. XCII.—*An Act to authorize Eri H. Comstock and others to construct and maintain a Toll-Road and Bridges, and fix the Rates of Toll on the same.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Corporators.	SECTION 1. That Eri H. Comstock, and others, their associates and successors, be, and are hereby, granted the right and
Franchise.	privilege of maintaining a toll-road and toll-bridges, commencing near the town of Dayton, at or adjoining the crossing where the road crosses the river to the east bank of the same, on the road from Dayton to Fort Churchill, and also the right, property, privilege, and franchise to the crossing of said river, about one third to one fourth, more or less, of one mile below said first mentioned crossing, at or near the usual crossing of the same, from the east to the west bank of said stream, for a like purpose of erecting two bridges; and also the right, privilege, and franchise of building, grading, and constructing a road from said town of Dayton, by the most practicable route, crossing said Carson River at or near said town of Dayton, to what is called Miller's Station upon said stream; together with the right to charge tolls thereon, and to erect one or more toll-gates upon the same, and to charge the following rates of toll, to wit:
Rates of toll.	For wagon, drawn by six or eight animals, two dollars. For wagon, drawn by four animals, one dollar and fifty cents. For wagon, drawn by two animals, one dollar. For carriage or buggy, drawn by two horses, one dollar. For carriage or buggy, drawn by one horse, seventy-five cents. For horseman, twelve and one half cents. For pack animals, twelve and one half cents. For loose stock, ten cents.
Two per ct. receipts to be paid to territorial treasury.	SEC. 2. The tolls so collected shall not exceed the rates as designated in section first of this act, and said Eri H. Comstock and associates are required to keep said road in good repair and condition; and <i>provided</i> , further, that said Eri H. Comstock and associates shall keep a correct account of all moneys received, and that two (2) per cent. of the gross receipts thereof be paid into the territorial treasury.
Quarterly account of receipts.	SEC. 3. And the said Eri H. Comstock and his associates shall render a true account of their gross proceeds, under oath, each and every three months, and pay into the territorial treasury two per cent. on the gross proceeds, as specified in section second of this act; and if it be proven, before any court of competent jurisdiction, that said company, to wit, Eri H. Comstock, has willfully misrepresented, or reported less than their gross receipts, then this charter shall be null and void.

SEC. 4. Any person, or persons, who, upon demand being made for toll as provided in this act, at any toll-gate on said road, by the said parties, or their agent, or agents, refuses to pay the same as herein authorized, or who shall pass, or attempt to pass, said toll-gate or gates, without paying toll as aforesaid, shall, upon complaint and conviction before a court of competent jurisdiction, be fined in any sum not less than ten dollars, nor more than one hundred dollars, for each offense, with costs, and stand committed until such fine and costs be paid. Refusal to pay toll.

SEC. 5. Any person, or persons, who shall in any way wantonly or maliciously destroy, or injure, any bridge or gate, on the line of said road, upon complaint and conviction before a court of competent jurisdiction, shall be fined in any sum not less than twenty-five dollars, nor more than five hundred dollars, with costs of suit, and stand committed until the same be paid, or be punished by imprisonment in the county jail for a period not exceeding six months, in the discretion of the court. All fines collected under the provisions of this act, shall be for the use and benefit of said road company. Injuring road.
Penalty for.

SEC. 6. It shall be lawful for the governor and legislature of the territory, at any future session of such legislature, to alter or change the rates of toll herein provided. May change rates.

SEC. 7. This act shall take effect immediately after its passage.

CHAP. XCIII.—*An Act authorizing the Private Secretary of the Governor to demand and receive certain Fees.*

[Approved Nov. 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the private secretary of the governor is hereby authorized to demand and receive the following fees, to wit: For each commission issued by the Governor, two dollars and fifty cents (\$2 50); for each paper receiving the seal of the territory, two dollars and fifty cents (\$2 50); for filing each paper, one dollar (\$1 00); for each folio entered and copied by him, forty (40) cents. Fees of.

CHAP. XCIV.—*An Act relating to Elections, and the Mode of Supplying Vacancies.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows :

- Voters.** SECTION 1. That all white male inhabitants, over the age of twenty-one years, shall be entitled to vote at any election for delegate to congress, and for territorial, district, county and precinct officers; *provided*, that they shall be citizens of the United States, and shall have resided four months in the territory, and thirty days in the county where they offer to vote, next preceding the day of election.
- Qualification**
- Persons disqualified.** SEC. 2. No person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony or bribery, in this territory, or any other territory or state in the Union, unless restored to civil rights, shall be permitted to vote at any election.
- General elections.** SEC. 3. A general election shall be held in the several election precincts in this territory, on the first Tuesday of September in each year, at which there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.—[Am.; see Chapter 101.]
- Eligibility to office.** SEC. 4. No person shall be eligible to the office of delegate to congress, to a seat as member of the council, or house of representatives, or any territorial office, unless he has been a resident of the territory one year prior to the time of a general election.
- Judges of election, by whom appointed.** SEC. 5. It shall be the duty of the county commissioners, at their regular session in July preceding the general election, to appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election at each election precinct, and said commissioners shall also set off and establish election precincts or districts, when it may be necessary; and the clerk of said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of the said notices, to serve the same upon each of the said judges of election. If in any precinct any of such judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy, on the morning of the election, to serve at such election.
- Duties of county officers.**
- Clerks of elections.** SEC. 6. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers, to be held at their respective precincts,

until other judges shall be appointed as herein before directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election; and the county commissioners shall, from time to time, fill all vacancies which may occur in the office of judges of election, at any election precinct within their respective counties.

SEC. 7. The clerks of the several boards of county commissioners shall, at least thirty days before any general election, and, at least fifteen days previous to any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct; said notices to be, as nearly as circumstances will admit, as follows: "Notice is hereby given, that on the first Tuesday, the _____ day of _____ next, at the house of _____, in the [town, district, or precinct] of _____, in the county of _____, an election will be held for territorial, county, town, or district officers, (naming the offices to be filled, as the case may be,) which election will be opened at eight o'clock in the morning, and will continue until six o'clock in the afternoon of the same day. Dated this _____ day of _____, A. D., 18—, (as the case may be.) Signed, A. B., clerk of the board of county commissioners."—[Am.; see Chapter 101.]

Election notices.

Form of.

SEC. 8. The sheriff aforesaid, to whom such notices shall be delivered, as aforesaid, shall put up in three of the most public places of each town or precinct, the notices referring to such town or precinct, at least fifteen days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; and, in cases where towns and precincts may be set off by law as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the others at two of the most public and suitable places in that vicinity or settlement.

Sheriff to post notices.

SEC. 9. Previous to votes being taken, the judges and clerks of the elections shall severally take the prescribed oath, and in addition thereto, an oath, in the following form, to wit: "I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge of the election, (or clerk, as the case may be,) according to law, and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same."

Oaths of judges and clerks of elections.

SEC. 10. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other, and to the clerk of the election, and the person administering the oaths, shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll book.

How taken.

Opening and
closing of
polls.

SEC. 11. At all elections to be held under this act, the polls shall be opened at the hour of eight o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; and upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same; and thirty minutes before the closing of the polls, proclamation shall be made in like manner, that the polls will be closed in half an hour; but the board may, in their discretion, adjourn the polls at twelve o'clock at noon, for one hour, proclamation of the same being made.

Poll books.

SEC. 12. It shall be the duty of the clerks of the several boards of county commissioners, to furnish the sheriff with two poll books, who shall deliver the same to one of the judges of every election precinct in the county, at least five days before the time of holding any election.

Ballots.

SEC. 13. Every elector shall, in full view, deliver to one of the judges of the election, a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill; said ballot may be open or folded, as the voter may choose.

Deposit of.

SEC. 14. The judge to whom any ticket may be delivered, shall, upon the receipt thereof, pronounce, with an audible voice, the name of the elector; and if no objection be made to him, and the judge shall be satisfied that the elector is legally entitled to vote, he shall immediately put the ticket in the box, without inspecting the names thereon, if it be a folded ballot; and the clerks of the election shall enter the name of the elector and number in the poll book.

Voting, in
certain cases

SEC. 15. It shall be lawful for any elector to vote for delegate to congress, at any place of holding an election within this territory; for members of the legislative assembly, and all other officers, at any place for holding elections within the particular limits for which such members of the legislative assembly, and such other officers, are to be elected; *provided*, that an elector qualified to vote for a part, and not all, of the officers to be chosen at any election, shall vote an open ticket, that the judges may determine the legality of such vote.

Challenging
voters.

SEC. 16. If any person offering to vote shall be challenged, as unqualified, by any judge or clerk of the election, or by any other person entitled to vote at the same poll, and either judge may challenge any person offering to vote, whom he shall know or suspect not to be qualified, the judge shall declare to the person so challenged the qualification of an elector; if such person shall then state himself duly qualified, and the challenge not be withdrawn, one of the judges shall then tender to him the following oath: "You do solemnly swear, or affirm, (as the case may be) that you are qualified, according to the law regulating elections in this territory, to vote for the elec-

Oath of
person
challenged.

tion of the officer (or officers, as the case may be) for whom you now propose to vote." And the clerks shall enter the names of all persons on the poll list who are challenged and take said oath, and shall enter opposite the names the word "sworn," in brackets, and such records shall be presumptive evidence of such votes.

SEC. 17. There shall be provided and kept by the judges of each election precinct (at the expense of the county), a suitable ballot-box, with a lock and key. Ballot-box and key.

SEC. 18. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purpose hereinafter mentioned. Ballot-box, examination of.

SEC. 19. At each adjournment of the polls, the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made, in all respects, to correspond. Poll lists to correspond.

SEC. 20. The ballot-box shall then be opened, and the poll books placed therein; and such box shall then be locked, and a covering, with a seal, placed on the opening in the lid of such box, so as to entirely cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board. Poll books, etc.

SEC. 21. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll; and the person having the care of the box shall carefully keep it, without opening it, or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly, in that condition, deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked. Judges to keep ballot-box and key separate.

CANVASSING BY THE JUDGES.

SEC. 22. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and continue, without adjournment, until completed. Canvass to be public.

SEC. 23. The canvass shall commence by a comparison of the poll lists, from the commencement, and a correction of any mistake that may be found therein, until they shall be found to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the judges, unopened, except so far as to ascertain whether each ballot is single; and Manner of.

if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if, on a comparison of the count with the poll list and the appearance of such ballots, a majority of the judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

Excess of
ballots.

SEC. 24. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out and destroy, therefrom, so many ballots, unopened, as shall be equal to such excess.

Counting
ballots.

SEC. 25. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length; such entry to be made, as nearly as circumstances will admit, in the following form, to wit:

Recapitula-
tion of votes,
etc., to be
entered in
poll book.

"At an election, held at the house of A B, in the [town, district, or precinct] of —, in the county of — and the territory of Nevada, on the — day of —, A. D. —, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit: A B had — votes for delegate to congress; C D had — votes for territorial treasurer; E F had — votes for territorial auditor; G H had — votes for territorial superintendent of public instruction; I J had — votes for member of legislative council; K L had — votes for member of house of representatives; (and in like manner for any other persons voted for). Certified by us, M N, O P, Q R, judges of election. Attest, A B, C D, clerks of election."

Election re-
turns, how
and to whom
made.

SEC. 26. The judges of election shall then inclose and seal one of the poll books under cover, directed to the clerk of the board of commissioners of the county in which such election was held; and the packet, thus sealed, shall be conveyed by one of the judges or clerks of election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to the said clerk of the board of county commissioners, at his office, within ten days from the close of the polls; and the other poll-book, together with the ballot-box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon; and the said poll-book shall be subject to the inspection of any elector, at any time thereafter, who may wish to examine the same. The returns of elections in unorganized counties, shall be made to the clerk of the county to which they are attached for judicial purposes.

Returns of
unorganized
counties.

SEC. 27. If any person, after being deputed by the judges of election to carry the poll book of such election to the clerk of the county, shall fail or neglect to deliver such poll book to the said clerk, within the time prescribed by law, safe, with the seals unbroken, he shall, for every such offense, and when convicted thereof, forfeit and pay the sum of five hundred dollars, and be imprisoned in the county jail until such fine is paid, for the use of the county, the same to be recovered by a civil action, in the name of the county commissioners, in the district court.

Penalty for neglect to deliver returns.

OF THE CANVASS BY THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS.

SEC. 28. On the tenth day after the close of any election, or sooner, if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, or any two county officers, shall proceed to open said returns, and make abstracts of the votes; such abstract of votes for delegate to congress shall be on one sheet, the abstract of the votes for members of the legislative assembly shall be on one sheet, and the abstract of the votes for district and territorial officers shall be on one sheet, and the abstract of the votes for county and precinct officers shall be on another sheet; and it shall be the duty of said clerk of the board of county commissioners, immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and precinct officers respectively, and to deliver such certificate to the person entitled to it on his making application to the clerk at his office; *provided*, that when a tie shall exist between two or more persons for the council or the house of representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice; and it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

Manner.

Where a tie exists, duty of county clerk.

SEC. 29. The clerk of the board of county commissioners, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail, express, or special messenger, to the secretary of the territory, at the seat of government; and it shall be the duty of the secretary of the territory, with the marshal of the territory, or his deputy, in presence of the governor, to proceed within thirty days after the election, and sooner, if the

County returns to secretary of territory.

- returns be all received, to canvass the votes given for delegate to congress; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice, by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election.
- Governor to grant certificate of election.**
- New election**
- Delayed returns.**
- Messenger, etc.**
- Special election to fill vacancy.**
- Joint canvass of two or more counties in certain cases.**
- Per diem of judges, clerks, etc.**
- Penalties for violation of act.**
- SEC. 30. If the returns of the election of any county in this territory, shall not be received at the office of the secretary of the territory, within twenty days after the election, the said secretary may forthwith send a messenger to the clerk of the board of commissioners of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the county treasury of the said county, the sum of thirty cents for each mile he shall necessarily travel in going to and returning from said county.
- SEC. 31. Any person who shall receive a certificate of his election, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of member of the council or house of representatives, by death, resignation, or otherwise, and a session of the legislature is to take place before the next annual election, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district to hold a special election to fill such vacancy, or vacancies, at a time appointed by the governor.
- SEC. 32. When two or more counties are united in one council or representative district, or for the election of any officer, the clerk of the board of county commissioners of the county or counties last established shall, on the twentieth day after the election, unless a previous time is agreed upon, attend at the office of the clerk of the board of the senior county, and, together with him, shall canvass the votes according to law, and the certificate of election shall be signed by such clerks, and be delivered to the proper persons at the office of the clerk of the senior county; and for the purposes of this act, the county first created shall be deemed the senior county, and when all the counties were created by the same act, the county first named therein shall be deemed the senior county.
- SEC. 33. There shall be allowed, out of the county treasury of each county, to the several judges and clerks of election, five dollars *per diem*, and to the person carrying the poll books from the place of election to the clerk's office, and to the clerks of the board of county commissioners, for attending at another county to canvass votes, the sum of thirty cents per mile, for going and returning, to be paid out of the county treasury.
- SEC. 34. If any judge or clerk of election, or any other person in any manner concerned in conducting the election,

shall corruptly violate any of the provisions of this act, he shall forfeit and pay to the county a sum not less than fifty nor more than one thousand dollars, and be imprisoned in the county jail until such fine is paid; the same to be recovered by a civil action, in the name of the county commissioners of the proper county, for the use of common schools in said county.

SEC. 35. The term of office of all officers elected, shall begin from the time of their qualification, unless some other express provision is made by law. Term of office.

SEC. 36. In all elections, the person having the highest number of votes for any office, shall be deemed to have been elected. Who deemed elected.

SEC. 37. In counting votes, the judges of election shall disregard misspelling or abbreviations of the names of candidates for office, if it can be ascertained from such votes for whom they were intended. Misspelling, etc., to be disregarded.

OF THE MANNER OF CONTESTING THE ELECTION OF COUNTY, TOWN, DISTRICT AND PRECINCT OFFICERS.

SEC. 38. All contests for county and precinct officers shall be tried in the proper county, and whenever any elector shall wish to contest such election, he shall file with the clerk of the board of county commissioners, within ten days after such person shall have been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall issue to the contestee a notice to appear at the time and place specified in the notice, before the probate court, which notice, with a copy of such statement, shall be delivered to the sheriff, who shall, within five days, serve the same on the contestee, by delivering to him a copy of such notice and statement, or by leaving such copy at his usual place of residence. Duties of county officers.

SEC. 39. The probate court, at the time specified in the notice, and, if it shall appear by the sheriff's return that notice has been duly served on the contestee, shall proceed to try such contest. Each party shall be entitled to subpoenas, and subpoenas *duces tecum*, as in ordinary cases at law, and the probate court shall hear and determine such contest in such manner as shall carry into effect the expressed will of a majority of the legal voters, as indicated by their votes for such office, not regarding technicalities or error in spelling the name of any candidate for such office; and the clerk of said board shall issue a certificate to the person declared to be elected by said board, which shall be conclusive evidence of the right of said person to hold such office. Probate court to try contest.

SEC. 40. This act shall not be construed so as to impair in any way the right of any person to contest any election in the manner otherwise provided by statute. Act to be construed.

OF RESIGNATIONS, VACANCIES, AND REMOVALS, AND SUPPLYING VACANCIES.

To whom made.

SEC. 41. Resignations shall be made as follows: First. By the territorial officers, and by all officers elected by the legislature, to the governor. Second. By all county officers, to the county commissioners in their respective counties. Third. By all other officers holding their offices by appointment, to the body, board, or officer that appointed them.

VACANCIES.

Offices, when vacant.

SEC. 42. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office: First. The death of the incumbent. Second. His resignation. Third. His removal. Fourth. His ceasing to be an inhabitant of the territory, district, county, or town, for which he shall have been elected, or appointed, or within which the duties of his office are to be discharged. Fifth. His conviction of any infamous crime, or of any offense involving a violation of his official oath. Sixth. His refusal or neglect to take his oath of office, or to give or renew his official bond, or deposit such oath or bond within the time prescribed by law. Seventh. The decision of a competent tribunal declaring void his election or appointment.

Governor may declare vacant.

SEC. 43. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

SUPPLYING VACANCIES.

Governor to fill.

SEC. 44. Whenever a vacancy shall occur during the recess of the legislature, in any office which the legislature are authorized to fill by election, or which the governor, subject to confirmation of legislative council, is authorized to fill, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

County commissioners to fill.

SEC. 45. When, at any time, there shall be in either of the county or precinct offices, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of either of said offices; *provided*, that in case there is no board of county commissioners, the governor may, on notice of such vacancy, create or fill such board.

Persons appointed to fill vacancy to qualify.

SEC. 46. Every person so appointed, in pursuance of either of the last two preceding sections, shall, before proceeding to execute the duties assigned them, qualify in the same [manner] as required by law of the officers in whose place they shall be appointed; and they shall continue to exercise and perform the duties of the office to which they shall be so appointed, until such vacancy shall be regularly supplied as provided by law.

SEC. 47. This act shall be in force and take effect from its passage.

CHAP. XCV.—*An Act in relation to holding Terms of Probate Courts.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. The terms of the probate court shall be held at the county-seats of organized counties of the territory, on the first Mondays of February, April, June, August, October, and December, of each year, and such special terms may be held as the judge of court may, from time to time, appoint and direct. When held.

SEC. 2. This act to take effect and be in force from and after its passage.

CHAP. XCVI.—*An Act authorizing the Collection of Toll on Roads already constructed within the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That all owners of roads already constructed, or in course of construction, within the territory of Nevada, at the time of the passage of this act, be, and are hereby authorized to collect toll upon such roads, at such rates as may be established by the commissioners of the counties through which such roads may run. Toll to be charged.

SEC. 2. Until such commissioners shall have been elected in the several counties, the rates of toll to be collected shall remain as established by such road owners at the date of the passage of this act, except those that have special charters in the territory of Nevada; *provided*, they conform with such charter. County commissioners to establish rates.

SEC. 3. This act shall take effect immediately after its passage.

CHAP. XCVII.—*An Act to Fix the Salary of the Territorial Superintendent of Public Instruction.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Salary
authorized.

SECTION 1. The salary of the territorial superintendent of public instruction, shall be the sum of twelve hundred dollars per year, to be paid quarterly, out of any money in the territorial treasury not otherwise specially appropriated by law.

Territorial
auditor,
duty of.

SEC. 2. It is hereby made the duty of the territorial auditor to draw, at the end of each quarter, his warrant upon the treasurer for the salary provided for in the last preceding section of this act, and it shall be the duty of the territorial treasurer to pay the same out of any money in the territorial treasury not otherwise appropriated.

Repeal of
sec. 1, art. 2,
chap. 72.

SEC. 3. Section first of chapter [article] second of an act entitled "An Act Establishing a Common School System for the Territory of Nevada," which reads as follows: "There shall be elected, at the first special election in January, one territorial superintendent of public instruction, who shall remain in office, and perform the duties thereof, until his successor shall have been elected and qualified," is hereby repealed; and the said territorial superintendent of public instruction shall be appointed in pursuance of the provisions of an act entitled, "An Act creating Officers in the Territory of Nevada," passed November twenty-eighth, eighteen hundred and sixty-one.

CHAP. XCVIII.—*An Act to authorize the Secretary of the Territory to receive Compensation for certain Duties pertaining to his Office.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Certificate
and seal.

SECTION 1. That it shall be lawful for the secretary of the territory to demand, and receive, the sum of one dollar, for attaching a certificate and the seal of his office to any instrument not pertaining to the government of said territory.

Commissions

SEC. 2. That the said secretary shall also be entitled to demand and receive the sum of five dollars, for each and every appointment of commissioner of deeds that may be issued.

SEC. 3. For a copy of any law, joint resolution, transcript

of record, or other document or paper, on file in his office Copying. (except when furnished to any officer of the territory, or any county or district thereof), thirty cents per folio, of one hundred words.

SEC. 4. For filing each certificate of incorporation, one Certificate of incorporat'n. dollar.

SEC. 5. That the said secretary shall, at his own expense, Blanks. furnish all blank forms that may be required by sections one and two of this act.

SEC. 6. This act to take effect, and be in force, from and after its passage.

CHAP. XCIX.—*An Act to audit the Claim of Marcus D. Larrowe, and to provide for the payment of the same.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. That the claim of Marcus D. Larrowe, as district attorney for the first judicial district of the territory of Nevada, for official services rendered, and fees, in criminal cases, from the time of his appointment up to the first day of December, A. D. eighteen hundred and sixty-one, amounting to the sum of one thousand and seventy-five dollars, is hereby audited and allowed as indebtedness against the territory of Nevada. Allowed, \$1,075 00

SEC. 2. It shall be the duty of the territorial auditor, to issue to the said Marcus D. Larrowe, territorial scrip, as evidence of indebtedness to the amount specified in the first section of this act; and it shall be the duty of the territorial treasurer to pay the same, in its regular order, out of any moneys in the territorial treasury. Said scrip, as evidence of indebtedness, shall bear interest, at the rate of ten per cent. per annum, from the date of this act till the payment of the same. Duties of territorial auditor and treasurer.

CHAP. C.—*An Act authorizing William H. Dickson, and others, to Establish and Maintain a Toll Road.*

[Approved November 28, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

Franchise. SECTION 1. William H. Dickson, and others, their associates, and assigns, are hereby granted the right and privilege of maintaining a toll road from the point where the Aurora road crosses Desert Creek; thence, following near said road to where the Sweet Water crosses said road; thence, following the survey made by Clayton, Dickson and Company, to the town of Aurora, in the Esmeralda mining district, over the route heretofore established by Clayton, Dickson and Company, and occupied and used by them as a toll road.

SEC. 2. The said William H. Dickson and Company, shall have the right to charge and collect tolls on said road, not exceeding the following rates, viz.:

Rates of toll. Wagon and one span of horses, two dollars.
Wagon and one yoke of oxen, two dollars.
Each additional animal, twenty-five cents.
Empty teams, returning, half-price.
Buggy and two horses, two dollars.
Buggy and one horse, one dollar and fifty cents.
Man on horseback, twenty-five cents.
Each pack animal, twenty cents.
Loose animals, ten cents.

Toll-gates. SEC. 3. The said William H. Dickson, and his associates, may also establish [toll-gates] at one or more points on said road, and collect tolls thereat; *provided*, the aggregate tolls so collected shall not exceed the rates as designated in section two of this act; and said company are required to keep said road in good condition and repair; and *provided*, further, that said company shall keep a correct account of all moneys received, and pay into the territorial treasury, two (2) per cent. of the gross receipts thereof; and if it be proven before any court of competent jurisdiction, that said company has willfully misrepresented, or kept a false account of the receipts of said road, then this charter shall be null and void.

Refusal to pay toll. SEC. 4. Any person or persons who, upon demand being made for toll, as provided in this act, at any toll-gate on said road, by the said parties or their agent or agents, refuses to pay the same as herein authorized, or who shall pass or attempt to pass said toll-gate or gates without paying toll as aforesaid, shall, upon complaint and conviction before a court of competent jurisdiction, be fined in any sum not less than ten dollars, nor more than one hundred dollars, for each offense, with costs, and stand committed until such fine and costs are paid.

Penalty.

SEC. 5. Any person or persons who shall, in any way, wantonly or maliciously destroy, or injure any bridge or gate on the line of said road, or in such manner injure said road, upon complaint and conviction before a court of competent jurisdiction, shall be fined in any sum not less than twenty-five dollars, nor more than five hundred dollars, with costs of suit, and stand committed until the same be paid, or be punished by imprisonment in the county jail for a period not exceeding six months, in the discretion of the court. All fines collected under the provisions of this act, shall be for the use and benefit of said road company.

Injury to road.

Penalty.

SEC. 6. It shall be lawful for the governor and legislature of this territory, at any future session of such legislature, to alter or change the rates of toll herein provided.

Rates of toll may be changed.

SEC. 7. This act shall take effect immediately after its passage.

CHAP. CI.—*An Act supplemental to and amendatory of "An Act relating to Elections, and the Mode of Supplying Vacancies," passed at the First Session of the Legislative Assembly of the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

SECTION 1. Section three of an act entitled "An Act relating to Elections, and the Mode of Supplying Vacancies," passed at the first session of the legislative assembly of the territory of Nevada, is hereby amended, so as to read as follows: Section 3. A general election shall be held in the several election precincts in this territory, on the first Wednesday of September, in each year, at which there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.

Amendment.

SEC. 2. Section six [seven] of the above named act, is hereby amended, by substituting the first Wednesday of September of each year, in the place of the first Tuesday.

Same.

SEC. 3. This act shall take effect from and after its passage.

CHAP. CII.—*An Act providing for the Appointment of a Commissioner to the World's Fair of eighteen hundred and sixty-two, and making an Appropriation to procure Specimens, etc.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

- Governor to appoint commissioner. SECTION 1. The governor of this territory is hereby authorized to appoint a commissioner to represent the interest of this territory at the World's Fair, to be opened in London, in the month of May, eighteen hundred and sixty-two.
- Duty of commissioner. SEC. 2. It shall be the duty of said commissioner to receive and properly prepare for exhibition, at the World's Fair, specimens of the various ores, minerals, and other subjects, of a general interest, from different locations in this territory.
- Appropriated, \$500 00. SEC. 3. The sum of five hundred dollars is hereby appropriated, out of the general fund, for the purpose of collecting and properly preparing the specimens aforesaid, and paying the freight on the same to said exhibition.
- To account for. SEC. 4. Said commissioner shall account accurately for, and give receipts to the treasurer of the territory, for such sums out of said appropriation, as he may necessarily expend.
- SEC. 5. This act shall take effect from and after its passage.

CHAP. CIII.—*An Act to regulate Proceedings in Civil Cases in the Courts of Justice of the Territory of Nevada.*

[Approved November 29, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

TITLE I.

OF THE FORM OF CIVIL ACTIONS, AND OF THE PARTIES THERETO.

- Only one form of action. SECTION 1. There shall be in this territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be the same at law and in equity.
- Parties designated. SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.
- Question of fact. SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be

made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act; but in suits brought by the assignee of an account, unliquidated demand, or thing in action not arising out of contract, the assignor shall not be a witness on behalf of the plaintiff.

Action, in whose name prosecuted.

Assignor not to be witness.

SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note, or bill of exchange, transferred in good faith, and upon good consideration, before due.

Set-off, when not prejudiced.

SEC. 6. An executor or administrator, trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

Action by executor.

SEC. 7. When a married woman is a party, her husband shall be joined with her; except, that when the action concerns her separate property, she may sue alone; when the action is between herself and her husband, she may sue or be sued alone.

When married woman is party, exceptions.

SEC. 8. If a husband and wife is [are] sued together, the wife may defend for her own right.

Defense by.

SEC. 9. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or a probate judge.

Infant, how to appear.

SEC. 10. The guardian shall be appointed as follows: First. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or, if under that age, upon the application of a relative or friend of the infant. Second. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

Guardian, how appointed.

SEC. 11. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

Injury to child, etc.

SEC. 12. All persons having an interest in the subject of the action, and obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this act.

Plaintiff, who may be joined.

SEC. 13. Any person may be made a defendant, who has,

Defendant,
who may
be made.

or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Parties, who
to be joined.

SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs, or defendants; but if the consent of any one, who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

Separately
liable, may
be joined.

SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

Death of
party, or
transfer of
interest.

SEC. 16. An action shall not abate by the death, or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, or other disability, of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

Controversy,
when court
to determine

SEC. 17. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

TITLE II.

PLACE OF TRIAL OF CIVIL ACTIONS.

Where sub-
ject matter
is situated.

SEC. 18. Actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this act: First. For the recovery of real property, or mining claims, or of an estate or interest therein, or for the determination, in any form, of such right or interest, or for injuries to real property. Second. For the partition of real property. Third. For the foreclosure of a mortgage of real property,

Where cause
of action
arose.

SEC. 19. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial: First. For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense com-

mitted on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed. Second. Against a public officer, or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

SEC. 20. In all other cases, the action shall be tried in the county in which the parties, or some of them, reside at the commencement of the action; or, if none of the parties reside in the territory, the same may be tried in any county which the plaintiff may designate in his complaint, subject, however, to the power of the court to change the place of trial, as provided in this act. Where parties reside.

SEC. 21. The court may, on motion, change the place of trial in the following cases: First. When the county designated in the complaint is not the proper county. Second. When there is reason to believe that an impartial trial cannot be had therein. Third. When the convenience of witnesses, and the ends of justice, would be promoted by the change. Fourth. When, from any cause, the judge is disqualified from acting in the action. Changing.

TITLE III.

MANNER OF COMMENCING ACTIONS.

SEC. 22. Civil actions in the district court, and the probate courts, shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, and the issuing of a summons thereon; *provided*, that, after the filing of the complaint, a defendant in the action may appear, answer or demur, whether the summons has been issued or not, and such appearance, answer or demurrer, shall be deemed a waiver of summons. How commenced in certain courts.

SEC. 23. The clerk shall indorse on the complaint the day, month and year the same is filed; and, at any time within one year after the filing of the same, the plaintiff may issue, or cause to be issued, a summons therein. The summons shall be issued and signed by the clerk, or the attorney of the plaintiff, and directed to the defendant, and when issued by the clerk, to be issued under the seal of the court. Complaint, how indorsed
Summons.

SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint, within the time mentioned in the next section, after the service of summons, exclusive of the day of service, or that judgment by default will be taken against him, according to the prayer of the complaint, briefly stating the sum of money or other relief demanded in the complaint. Form of.

Answer,
when to
be made.

SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First. If the defendant is served within the county in which the action is brought, ten days. Second. If the defendant is served out of the county, but in the district in which the action is brought, twenty days. Third. In all other cases, forty days.

Notice to be
inserted in
summons.

SEC. 26. There shall also be inserted in the summons a notice, in substance as follows: First. In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint. Second. In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

Notice in
action af-
fecting real
property.

SEC. 27. In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any time afterwards, may file with the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby. From the time of filing, only, shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby.

Summons,
by whom
served.

SEC. 28. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or appointed by a judge of the court in which the action is brought, or by any white male citizen of the United States, over twenty-one years of age. When the summons is served by the sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer, to the office of the clerk where the complaint is filed. When the summons is served by any other person, as before provided, it shall be returned to the office of the clerk, with the affidavit of such person of its service.

How served.

SEC. 29. The summons shall be served by delivering a copy thereof, as follows: First. If the suit be against a corporation, to the president or other head of the corporation, secretary, cashier, or managing agent thereof. Second. If against a minor, under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian; or, if there be none within the territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed. Third. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian. Fourth. In all other cases, to the defendant personally.

Service by
publication.

SEC. 30. When the person on whom the service is to be made, resides out of the territory, or has departed from the territory, or cannot, after due diligence, be found within the

territory, or conceals himself to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court, or a judge thereof, or a probate judge, and it shall, in like manner, appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by publication of the summons.

SEC. 31. The order shall direct the publication to be made in a newspaper to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; *provided*, that the publication against a defendant, being or residing either in the states of California or Oregon, or territories of Utah or Washington, shall not be less than one month; and against a defendant residing out of this territory, or absent therefrom, or out of either of the states of California or Oregon, or territories of Utah or Washington, shall not be less than three months. In case of publication, where the residence of a non-resident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint, out of the territory, shall be equivalent to publication and deposit in the post office. In either case, the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication. In actions upon contracts for the direct payment of money, the court, in its discretion, may, instead of ordering publication, or may, after publication, appoint an attorney to appear for the non-resident, absent or concealed defendant, and conduct the proceedings on his part.

SEC. 32. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First. If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendant served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendant served; or, Second. If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

SEC. 33. Proof of the service of the summons shall be as follows: First. If served by the sheriff or his deputy, the affidavit or certificate of such sheriff or deputy; or, Second. If by any other person, his affidavit thereof; or, Third. In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same; and an affidavit of a deposit

Same.

Proceedings where service is made only on some of several defendants.

Proof of service.

of a copy of the summons in the post office, if the same shall have been deposited; or, Fourth. The written admission of the defendant.

Same.

SEC. 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of the service.

Jurisdiction,
when it
attaches.

SEC. 35. From the time of the service of the summons in a civil action, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

TITLE IV.

PLEADINGS.

Defined.

SEC. 36. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

Rules of.

SEC. 37. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

By plaintiff
and defend-
ant.

SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint, demurrer, or replication to the defendant's answer, and the only pleadings on the part of the defendant shall be a demurrer to the complaint, or a demurrer to the replication, or an answer to the complaint. The demurrer or answer of the defendant, and the demurrer or replication of the plaintiff, shall be filed with the clerk, and a copy thereof served on the adverse party, or his attorney.

Complaint,
what to
contain.

SEC. 39. The complaint shall contain—First. The title of the action, specifying the name of the court and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant, and shall be addressed to a court of law or equity, as the case may be. Second. A statement of the facts constituting the cause of action, in ordinary and concise language. Third. A demand of the relief which the plaintiff claims. If the recovery of money, or damages, be demanded, the amount thereof shall be stated.

Demurrer to.

SEC. 40. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either—First. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or, Second. That the plaintiff has not legal capacity to sue; or, Third. That there is another action pending between the same parties for the same cause; or, Fourth. That there is a defect or misjoinder of parties, plaintiff or defendant; or, Fifth. That several causes of action have been improperly united; or, Sixth. That the complaint does not state facts

sufficient to constitute a cause of action; or, Seventh. That the complaint is ambiguous, unintelligible, or uncertain.

SEC. 41. The demurrer shall distinctly specify the ground Same. upon which any of the objections to the complaint are taken. Unless it do so, it may be disregarded.

SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, Same. and answer the residue; or may demur and answer at the same time.

SEC. 43. If the complaint be amended, a copy of the amendments shall be filed, or the court may, in its discretion, Amending. require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney, if he has appeared by attorney; the defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

SEC. 44. When any of the matters enumerated in section forty, do not appear upon the face of the complaint, the objection may be taken by answer. Objections to by answer.

SEC. 45. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action. Waiver of objections to.

SEC. 46. The answer of the defendant shall contain—First. If the complaint be verified, a specific denial to each allegation of the complaint controverted by the defendant, or a denial thereof, according to his information and belief; if the complaint be not verified, then a general denial to each of such allegations, but a general denial shall only put in issue the material and express allegations of the complaint. Second. A statement of any new matter or counter-claim, constituting a defense, in ordinary and concise language. When the answer contains new matter, constituting a defense, the plaintiff may, within the same length of time allowed for answering, and subject to the same rules, reply to such new matter; and if he fail to do so, such new matter shall be taken as true, and deemed proved at the trial. If new matter of set-off and counter-claim be set up in the answer, the reply may contain matter of set-off and counter-claim, not embraced in the complaint. All new matter set up in the replication, shall be deemed denied by the defendant. Answer, what to contain.

SEC. 47. The counter-claim mentioned in the last section, shall be one existing in favor of the defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First. A cause of action arising out of the transaction set forth in the complaint or answer, as the foundation of the plaintiff's claim, or defendant's defense, connected with the: Counter-claim.

subject of the action. Second. In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

Cross-
demands.

SEC. 48. When cross-demands have existed between persons, under such circumstances, that if one had brought an action against the other, a counter-claim could have been set up, neither shall be deprived of the benefit thereof, by the assignment or death of the other; but the two demands shall be deemed compensated, so far as they equal each other.

Several
defenses may
be set up.

SEC. 49. The defendant may set forth by answer as many defenses and counter-claims as he may have. They shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

Demurrer to.

SEC. 50. When the answer contains new matter, the plaintiff may, within the number of days which the defendant is, by the summons, required to answer, and days to be computed from the time of the service on the plaintiff, of such answer, demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may, also, within the same time, demur to one or more defenses, set up in the answer, and the defendant may in like manner demur to the plaintiff's replication. Sham and irrelevant answers, replications, and defenses, and so much of any answer or replication as may be irrelevant, redundant, or immaterial, may be stricken out on motion, and upon such terms as the court in its discretion may impose.

Sham
pleadings.

Pleadings to
be subscribed
and verified.

SEC. 51. Every pleading shall be subscribed by the party, or his attorney, and when the complaint is verified by affidavit, the answer and replication shall be verified also, except as provided in the next section.

Verification,
when omit't'd.

SEC. 52. The verification of the answer or replication, required in the last section, may be omitted when an admission of the truth of the complaint or answer might subject the party to prosecution for felony or misdemeanor.

Genuineness
of written
instrument
admitted.

SEC. 53. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

Same.

SEC. 54. When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the replication denying the same be verified.

Manner of
verifying
pleadings.

SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from

the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney, or other person verifying the same. When the pleading is verified by the attorney, or any other person except the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by an officer thereof; or when the territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts, except that in actions prosecuted by the attorney-general or district attorney, in behalf of the territory, the pleadings need not, in any case, be verified.

SEC. 56. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party, within five days after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or a judge thereof, or a probate judge, may order a further account, when the one delivered is too general, or is defective in any particular.

Items of account need not be set forth.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the court on motion of any person aggrieved thereby.

Irrelevant matter.

SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint.

Complaint to recover.

SEC. 59. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Judgment.

SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

Conditions precedent.

SEC. 61. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Private statutes.

SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

Libel or slander, in action for.

Truth may
be alleged.

SEC. 63. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Several
causes of ac-
tion in one
complaint.

SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they all arise out of—First. Contracts express or implied; or, Second. Claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or, Third. Claims to recover specific personal property, with or without damages for the withholding thereof. Fourth. Claims against a trustee by virtue of a contract or by operation of law; or, Fifth. Injuries to character; or, Sixth. Injuries to person; or, Seventh. Injuries to property. But the causes of action so united, shall all belong to one only of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated; *provided*, however, that an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person.

Allegations,
when taken
as true.

SEC. 65. Every material allegation of the complaint or answer, when it is verified, not specifically controverted by the answer or replication, shall, for the purpose of the action, be taken as true. The allegation of new matter in the replication shall, on trial, be deemed controverted by the adverse party.

Material
allegations.

SEC. 66. A material allegation in a pleading is one essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient.

Answer after
demurrer.

SEC. 67. After demurrer, and before the trial of issue on demurrer, either party may, within ten days, amend any pleading demurred to, of course, and without costs, filing the same, as amended, and serving a copy thereof upon the adverse party, or his attorney, who shall have ten days to answer, reply, or demur thereto; but a party shall not so amend more than once. When a demurrer to a complaint or answer is overruled, and there is no answer or replication filed, the court may, upon such terms as shall be just, and upon payment of costs, allow an answer or replication to be filed. If a demurrer to the replication be overruled, the facts alleged in the replication shall still be considered as denied.

Amendment
of pleadings.

SEC. 68. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceedings, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, and may, upon like terms, enlarge the time for an answer or demurrer, or demurrer to an answer filed. The court may, likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon

such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may, upon like terms, allow an answer to be made after the time limited by this act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect, when, from any cause, the summons and a copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant, or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Time for answer.

SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and, when his true name is discovered, the pleading or proceeding may be amended accordingly.

Plaintiff ignorant of defendant's name.

SEC. 70. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Pleadings, how construed.

SEC. 71. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

Error, when to be disregarded.

TITLE V.

CHAPTER I.—*Of the Provisional Remedies in Civil Actions; Arrest and Bail.*

SEC. 72. No person shall be arrested in a civil action, except as prescribed by this act.

Arrest.

SEC. 73. The defendant may be arrested, as hereinafter prescribed, in the following cases, arising after the passage of this act: First. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors, or when the action is for willful injury to person, to character, or to property, knowing the property to belong to another. Second. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such; or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in a professional employment, or for a willful violation of duty. Third. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been con-

When may be made.

cealed, removed, or disposed of, so that it cannot be found, or taken by the sheriff. Fourth. When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought. Fifth. When the defendant has removed or disposed of his property; or is about to do so, with intent to defraud his creditors.

Order for,
how obtained

SEC. 74. An order for the arrest of the defendant, shall be obtained from a judge of the court in which the action is brought, or from a probate judge.

Same.

SEC. 75. The order may be made whenever it shall appear to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section seventy-three. The affidavit shall be either positive, or upon information and belief; and, when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the county.

Plaintiff to
give under-
taking.

SEC. 76. Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with sureties, to the effect, that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder, or freeholder, within the territory, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

When order
may be
made, form.

SEC. 77. The order may be made to accompany the summons, or any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order, at a time therein mentioned, to the clerk of the court in which the action is pending.

Order, duty
of sheriff.

SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy of the affidavit; and, also, if desired, a copy of the order of arrest.

How
executed.

SEC. 79. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law.

Defendant,
how dis-
charged.

SEC. 80. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon

depositing the amount mentioned in the order of arrest, as provided in this chapter.

SEC. 81. The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Bail, how
given.

SEC. 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or, he may surrender himself to the sheriff of the county where he was arrested.

Surrender in
discharge of.

SEC. 83. For the purpose of surrendering the defendant, the bail at any time or place before they are finally charged, may themselves arrest him; or, by a written authority, indorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated; *provided*, such arrest, delivery, or surrender, take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender, be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

May arrest
defendant.

SEC. 84. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

Judgment
against.

SEC. 85. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a territorial prison; or by his legal discharge from the obligation to render himself amenable to the process.

How
exonerated.

SEC. 86. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon; together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

Proceedings
after arrest.

SEC. 87. Within five days after the receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying

Notice of
justification
of bail.

the place of residence and occupation of the latter), before a judge of the court, or probate judge, or county clerk, at a specified time and place; the time to be not less than five, nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Qualifications
of bail.

SEC. 88. The qualifications of bail shall be as follows: First. Each of them shall be a resident, and householder, or freeholder, within the county. Second. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge, or county clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Bail, how
to justify.

SEC. 89. For the purpose of justification, each of the bail shall attend before the judge, or county clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or county clerk, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Allowance
of bail.

SEC. 90. If the judge, or clerk, find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

Deposit in
lieu of bail.

SEC. 91. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter [of this act], the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Disposition
of deposit.

SEC. 92. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same, two certificates of such payment; the one of which he shall deliver or transmit to the plaintiff, or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited, as in other cases of delinquency.

Bail after
deposit.

SEC. 93. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

Application
of deposit
after judgment.

SEC. 94. Where money shall have been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof; and, after

satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

SEC. 95. If, after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, at any time before judgment. Liability of sheriff.

SEC. 96. If a judgment be recovered against the sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency. Judgment against sheriff.

SEC. 97. A defendant arrested may, at any time before justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made. Vacating order of arrest.

SEC. 98. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or, if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced. Reduction of bail.

CHAPTER II.—*Claims for Delivery of Personal Property.*

SEC. 99. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided in this chapter [of this act]. When claim may be made

SEC. 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing—First. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second. That the property is wrongfully detained by the defendant. Third. The alleged cause of the detention thereof, according to his best knowledge, information and belief. Fourth. That the same has not been taken for a tax, assessment or fine, pursuant to a statute; or seized under an execution, or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure. Fifth. The actual value of the property. Affidavit to obtain order for delivery.

SEC. 101. The plaintiff or his attorney may thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant. Order for delivery.

SEC. 102. Upon a receipt of the affidavit, and notice, with a written undertaking executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound Proceedings on.

to the defendant in double the value of the property as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken, or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion, or if neither have any known place of abode, by putting them in the nearest post-office, directed to the defendant.

Sureties,
excepting to.

SEC. 103. The defendant may, within two days after service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Defendant
may require
return.

SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine.

Justification
of defend-
ant's securi-
ties.

SEC. 105. The defendant's sureties, upon notice to the plaintiff of not less than two, nor more than five days, shall justify before a judge or county clerk, in the same manner as upon bail on arrest; and upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 106. The qualification of sureties, and their justifica-

tion, shall be such as are prescribed by this act in respect to bail upon an order of arrest. Qualification of sureties.

SEC. 107. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession, and, if necessary, he may call to his aid the power of the county. Property concealed

SEC. 108. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same. Sheriff to keep property.

SEC. 109. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or right of possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim, by an undertaking, by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders of the county; and no claim to such property, by any other person than the defendant, or his agent, shall be valid against the sheriff, unless so made. Proceedings, when property claimed by third parties.

SEC. 110. The sheriff shall file the notice, undertaking and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein. Order and affidavit to be filed.

CHAPTER III.—*Injunctions.*

SEC. 111. An injunction is a writ, or order, requiring a person to refrain from a particular act. The order, or writ, may be granted by the court in which the action is brought, or by the judge thereof, or by a probate judge; and when made by a judge, may be enforced as the order of the court. Defined.

SEC. 112. An injunction may be granted in the following cases: First. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. Second. When it shall appear by the complaint or affidavit, that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff. Third. When it shall appear during the litigation, that the defendant is doing, or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation In what cases may be granted.

of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

When may
be granted.

SEC. 113. The injunction may be granted at the time of issuing the summons upon the complaint; and, at any time afterwards, before judgment, upon affidavits. The complaint, in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint, unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that, as to those matters, he believes it to be true. When granted on the complaint, a copy of the complaint, and verification attached, shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

After
answer.

SEC. 114. An injunction shall not be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but, in such case, the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Undertaking
on.

SEC. 115. On granting an injunction, the court or judge shall require, except where the people of the territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

Order nisi
for injunction.

SEC. 116. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

Injunction
to suspend
business of
corporation.

SEC. 117. An injunction to suspend the general and ordinary business of a corporation, shall not be granted, except by the court; nor shall it be granted without due notice of the application therefor to the proper officers of the corporation, except when the people of this territory are a party to the proceeding.

Motion to
dissolve or
modify.

SEC. 118. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on the part of the defendant, with or without the answer. If the application be made upon affidavit on the part of the

defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

SEC. 119. If, upon such application, it satisfactorily appear ^{Same.} that there is not sufficient ground for the injunction, it shall be dissolved; or if it satisfactorily appear that the extent of the injunction is too great, it shall be modified.

CHAPTER IV.—*Attachment.*

SEC. 120. The plaintiff, at the time of issuing the summons, or any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, in the following cases: First. Where the debtor is not a resident of this territory. Second. When the debtor has absconded or absented himself from his usual place of abode, or is about to abscond or absent himself, so that the ordinary process of law cannot be served upon him. Third. When the debtor conceals himself, so that the ordinary process of law cannot be served upon him. Fourth. Where the debtor has removed, or is about to remove, any of his property or effects out of the territory, to the injury of his creditors, or with the intent to hinder, delay, or defraud them. Fifth. Where the debtor has fraudulently conveyed, assigned, or otherwise disposed of, or is about to fraudulently convey, assign, or otherwise dispose of his property or effects, with the intent to hinder, delay or defraud his creditors. Sixth. Where the debtor has fraudulently concealed, or is about to fraudulently conceal his property or effects, with the intent to hinder, delay, or defraud his creditors. Seventh. Where the debtor fraudulently contracted the debt, or incurred the obligation respecting which the suit is brought. ^{At what cases may issue.}

SEC. 121. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, showing—First. That the defendant is indebted to the plaintiff in a certain sum (specifying the amount of such indebtedness), over and above all legal set-offs, or counter claims, upon a contract express or implied, for the direct payment of money, and that such contract was made, or is payable in this territory, and that the payment of the same has not been secured by any mortgage on real or personal property. Second. That the deponent has good reason to believe, and does believe, that one or more of the causes set forth in the several subdivisions of the next preceding section, actually exists at the time of making the affidavit reciting the facts upon which such belief is founded. ^{Affidavit, what to show.}

SEC. 122. Before issuing the writ, the clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, nor exceeding the amount claimed by the plaintiff, with sufficient sureties to the effect, ^{Undertaking of plaintiff.}

that if the defendant recover judgment, or if the attachment should be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damage which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ, re-
quirement of

SEC. 123. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case to take such undertaking. Several writs may be issued at the same time, to sheriffs of different counties.

Several may
issue.

What prop-
erty may be
attached.

SEC. 124. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this territory of such defendant, not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

How writ
shall be
executed.

SEC. 125. The sheriff to whom the writ is directed and delivered, shall execute the same without delay; and if the undertaking mentioned in section one hundred and twenty-three be not given, as follows—First. Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the recorder of the county. Second. Personal property, capable of manual delivery, shall be attached by taking it into custody. Third. Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ. Fourth. Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such writ.

Property in
hands of
third party,
how attach'd

SEC. 126. Upon receiving information in writing from the plaintiff, or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the

writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

SEC. 127. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied. Liability of third party.

SEC. 128. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof. Examination of third party.

SEC. 129. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum, may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit. Return of sheriff.

SEC. 130. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid. Perishable property to be sold.

SEC. 131. If any personal property attached be claimed by a third person as his property, the sheriff may summon a jury of six men to try the validity of such claim; and such pro- Property claimed by third party.

ceedings shall be had thereon, with the like effect, as in a case of a claim after levy upon execution.

Judgment,
how satisfied

SEC. 132. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant, as herein before provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose—First. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment. Second. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Notices of
sale.

Same.

SEC. 133. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Proceedings
when exec'n
returned
unsatisfied.

SEC. 134. If the execution be returned unsatisfied, in whole or in part, plaintiff may prosecute any undertaking given pursuant to section one hundred and twenty-three, or section one hundred and thirty-seven, or he may proceed as in other cases upon the return of an execution.

Proceedings
when defen't
recovers
judgment.

SEC. 135. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached, remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged, and the property released therefrom.

Discharge of
attachment,
when made.

SEC. 136. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the judge thereof, or to a probate judge, for an order to discharge the same, upon the execution of the undertaking mentioned in the next section; and if the application be granted, all the proceeds of sales and moneys collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment, and delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

SEC. 137. Upon such application the defendant shall de-

liver to the court or judge, an undertaking executed by at least two sureties, residents and freeholders or householders in the county, to the effect that the sureties will, on demand, pay to the plaintiff the amount of any judgment that may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be sufficient to satisfy the amount claimed by the plaintiff in his complaint, and the costs. The sureties may be required to justify, on such application before the judge or court, and the property attached shall not be released from the attachment without their justification, if the same be required.

Undertaking
of defendant.

SEC. 138. In all cases, when property or effects have been attached, the defendant, or any creditor of the defendant interested, may file a plea in the nature of a plea in abatement, under oath, putting in issue the truth of the facts alleged in the affidavit on which the attachment was sued out.

Plea in
abatement.

SEC. 139. Upon such issue, the plaintiff shall be held to prove that the facts alleged by him in said affidavit, as the grounds of the attachment, existed at the time of the issuance of the writ of attachment.

What to
prove.

SEC. 140. If the issue be found against the plaintiff, the attachment shall be dismissed at the cost of the plaintiff, and his sureties shall thereafter be liable upon the bond for all damages sustained by the defendant, in consequence of the issuing of the attachment.

Liability for
issuing at-
tachments.

SEC. 141. The sheriff shall return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon, or attached thereto.

Return of
sheriff.

CHAPTER V.—*Deposit in Court.*

SEC. 142. When it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs, or is due, to another party, the court may order the same, upon motion, to be deposited in court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Court may
order subject
matter to be

SEC. 143. A receiver may be appointed by the court in which the action is pending, or by a judge thereof—First. Before judgment, provisionally, on the application of either party, when he establishes a *prima facie* right to the property, or to an interest in the property which is the subject of the action, and which is in possession of an adverse party, and the property, or its rents and profits, are in danger of being lost or materially injured or impaired. Second. After judgment, to dispose of the property according to the judgment, or to preserve it during the pending of an appeal. And, Third. In

Appointm't
of receiver.

such other cases as are in accordance with the practice of courts of equity jurisdiction.

TITLE VI.

CHAPTER I.—*Trial and Judgment.*

Judgment. SEC. 144. A judgment is the final determination of the rights of the parties in the action or proceeding, and may be entered in term or vacation.

How given. SEC. 145. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Effect of. SEC. 146. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

Against one of several defendants. SEC. 147. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but, in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Extent of relief. SEC. 148. An action may be dismissed, or judgment of non-suit entered, in the following cases: First. By the plaintiff himself, at any time before trial, upon the payment of costs, if a counter-claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon. Second. By either party, upon the written consent of the other. Third. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. Fourth. By the court, when, upon the trial, and before the final submission of the case, the plaintiff abandons it. Fifth. By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury. The dismissal in the first two subdivisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

Dismissal of action, or nonsuit. SEC. 149. In every case other than those mentioned in the last section, the judgment shall be rendered on the merits.

Judgments on merits.

CHAPTER II.—*Judgment upon Failure to Answer.*

SEC. 150. Judgment may be had, if the defendant fail to answer, as follows: First. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon application of the plaintiff, shall enter the

default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section thirty-two. Second. In the other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant; and thereafter the plaintiff may apply, at the first, or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or, if, to determine the amount of damages, the examination of a long account be necessary, by a reference, as above provided. Third. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff, or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.—*Of Issues, and the manner of their disposition.*

SEC. 151. An issue arises when a fact or conclusion of law is maintained by the one party and controverted by the other. When an issue arises. Issues are of two kinds—First. Of law. Second. Of fact.

SEC. 152. An issue of law arises upon a demurrer to the complaint or answer [or] to some part thereof. Of law.

SEC. 153. An issue of fact arises—First. Upon a material allegation in the complaint controverted by the answer. Of fact. Second. Upon new matters in the answer, except an issue of law is joined therein.

SEC. 154. An issue of law shall be tried by the court, unless it be referred, upon assent, as provided in chapter six of this title. Of law, how tried.

SEC. 155. An issue of fact shall be tried by a jury, unless a jury trial is waived, or a reference ordered, as provided in this act. Where there are issues, both of law and fact, to the same complaint, the issues of law shall be first disposed of. Of fact, how tried.

SEC. 156. The clerk shall enter causes upon the calendar of the court according to the date of the issue. Causes once placed on the calendar, for a general or special term, if not Entry of causes on calendar.

tried or heard at such term, shall remain upon the calendar from court to court until finally disposed of.

Either party
may bring
issue to trial.

SEC. 157. Either party may bring the issue to trial, or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise direct, may proceed with his case and take a dismissal of the action, or a verdict or judgment, as the case may require.

Postponem't
of trial.

SEC. 158. A motion to postpone a trial, on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

CHAPTER IV.—*Trial by Jury.*

ARTICLE I.—*Formation of the Jury.*

Jury, how
drawn.

SEC. 159. When the action is called for trial by jury, the clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if, from any cause, a juror or jurors be excused or discharged, the sheriff shall summon, under the direction of the court, from the citizens of the county, and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

To be sworn,
form of oath.

SEC. 160. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance, that they each of them will well and truly try the matter in issue between ——— the plaintiff, and ——— the defendant, and a true verdict render according to the evidence.

Challenge to.

SEC. 161. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall either be peremptory, or for cause. Each party shall be entitled to four peremptory challenges.

Challenge
for cause.

SEC. 162. Challenges for cause may be taken on one or more of the following grounds: First. A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second. Consanguinity or affinity within the third degree to either party. Third. Standing in the relation

of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any bond or obligation for either party. Fourth. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action. Fifth. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation. Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action. Seventh. The existence of a state of mind in the juror evincing enmity against or bias to either party.

SEC. 163. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge. Challenge, how tried.

ARTICLE II.—*Conduct of the Trial.*

SEC. 164. If, after the empanneling of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, the trial may proceed with the other jurors, or a new jury may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards empaneled. Juror becoming sick.

SEC. 165. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict; and, if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all questions of fact. The court shall furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge; or shall sign, at the time, a statement of such points prepared and submitted by the counsel of either party. Charge to jury.

SEC. 166. After hearing the charge, the jury may either decide in court, or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and, he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. Jury may decide in court, or retire.

SEC. 167. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take Duty of officer. What papers jury may take.

with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them; but none taken by any other person.

Return of
jury for
instruction.

How given.

Proceedings
when jury
discharged
without
verdict.

Court may
adjourn dur-
ing absence
of jury.

Sealed
verdict.

Adjournm't
discharges
jury.

Verdict,
how given.

May be
corrected.

How
recorded.

Juror dis-
agreeing,
to be sent
out again.

SEC. 168. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the parties or counsel.

SEC. 169. In all cases where a jury are discharged, or prevented from giving a verdict, by reason of accident, or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct.

SEC. 170. While the jury are absent, the court may adjourn, from time to time, in respect to other business; but, it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered, or the jury discharged. The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during a recess, or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

SEC. 171. When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. Their names shall then be called, and they shall be asked by the court, or clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

SEC. 172. If the verdict be informal, or insufficient in not covering the whole issue or issues submitted, the verdict may be corrected by the jury, under the advice of the court, or the jury may be again sent out.

SEC. 173. When the verdict is given, and is not informal or insufficient, the clerk shall immediately record it, in full, in the minutes, and shall read it to the jury, and inquire of them whether it be their verdict. If any juror disagree, the jury shall be again sent out; but if no disagreement be expressed, the verdict shall be complete, and the jury shall be discharged from the case.

ARTICLE III.—*The Verdict.*

Kinds of.

SEC. 174. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those

conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

SEC. 175. In an action for the recovery of money only, or Same. specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special finding or verdict shall be filed with the clerk and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 176. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counter-claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery. When to find amount of recovery.

SEC. 177. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property. In action to recover specific property.

SEC. 178. Upon receiving a verdict, an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or, if the case be reserved for argument or further consideration, the order thus reserving it. Entry in minutes.

CHAPTER V.—*Trial by the Court.*

SEC. 179. Trial by jury may be waived by the several parties to an issue of fact, in actions arising on contract, and with the assent of the court in other actions, in the manner following: First. By failing to appear at the trial. Second. By written consent, in person or by attorney, filed with the clerk. Third. By oral consent, in open court, entered in the minutes. The court may prescribe by rule what shall be deemed a waiver in other cases. Jury trial may be waived.

SEC. 180. Upon the trial of an issue of fact by the court, its decision shall be given in writing, and filed with the clerk, within ten days after the trial took place. In giving the decision, the facts found and the conclusions of law shall be separated. Decision of court.

rately stated. Judgment upon the decision shall be entered accordingly.

Chancery
cases.

SEC. 181. Chancery cases may be tried by the court with or without the finding of jury upon issues formed by the court; and on a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

CHAPTER VI.—*Of References, and Trial by Referees.*

Order of
reference.

SEC. 182. A reference may be ordered upon the agreement of the parties filed with the clerk, or entered in the minutes—First. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a judgment thereon. Second. To ascertain a fact necessary to enable the court to proceed and determine the case.

Same.

SEC. 183. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases: First. When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein. Second. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. Third. When a question of fact, other than upon the pleadings, arises upon motion, or otherwise, in any stage of the action; or, Fourth. When it is necessary for the information of the court in a special proceeding.

Number of
persons to
whom or-
dered.

SEC. 184. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge shall appoint one or more referees, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection.

Referees,
objection to
appoint-
ment of.

SEC. 185. Either party may object to the appointment of any person as referee, on one or more of the following grounds: First. A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second. Consanguinity or affinity, within the third degree, to either party. Third. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or, being a member of the family of either party; or a partner in business with either party; or, being security on any bond or obligation for either party. Fourth. Having served as a juror, or been a witness on any trial between the same parties for the same cause of action. Fifth. Interest on the part of such person in the event of the action, or in the main question involved in the action. Sixth. Having formed or expressed an unqualified opinion or belief as to the merits

of the action. Seventh. The existence of a state of mind in such person evincing enmity against or bias to either party.

SEC. 186. The objections taken to the appointment of any person as referee, shall be heard and disposed of by the court. Objection, how disposed of. Affidavits may be read, and any person examined as a witness as to such objections.

SEC. 187. The referees shall make their report within ten days after the testimony before them is closed. Their report upon the whole issue shall stand as the decision of the court, and upon filing the report with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court. The decision of the referees may be excepted to and reviewed, in like manner as if made by the court. When the reference is to report the facts, the report shall have the effect of a special verdict. Report of referees.

CHAPTER VII.

ARTICLE I.—*Exceptions.*

SEC. 188. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to a jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties. Defined.

SEC. 189. The point of the exception shall be particularly stated, and may be delivered in writing to the judge, or if the party require it, shall be written down by the clerk. When delivered in writing, or written down by the clerk, it shall be made conformable to the truth, or be at the time corrected until it is so made conformable. When not delivered in writing, or written down as above, it may be entered in the judge's minutes, and afterwards settled in a statement of the case, as provided in this act. How taken.

SEC. 190. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence, or other matter, as is necessary to explain it, but no more; and the whole as briefly as possible. Same.

SEC. 191. When a cause has been tried by the court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on a motion for a new trial, or on appeal, without any special notice that an exception is taken thereto. When implied.

ARTICLE II.—*New Trials.*

SEC. 192. A new trial is a re-examination of an issue of fact, in the same court, after a trial and decision by a jury, court, or referees, in actions at law; but in chancery cases, such re- Defined.

examination shall be called a rehearing, and motions for a new trial, or rehearing, as the case may be, shall be conducted as in this article provided.

For what
causes
granted.

SEC. 193. The former verdict or other decision may be vacated, and a new trial or rehearing granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party; First. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial. Second. Misconduct of the jury. Third. Accident or surprise, which ordinary prudence could not have guarded against. Fourth. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial. Fifth. Excessive damages, appearing to have been given under the influence of passion or prejudice. Sixth. Insufficiency of the evidence to justify the verdict or other decision; or that it is against law. Seventh. Error in law, occurring at the trial, and excepted to by the party making the application.

When appli-
cation to be
made on
affidavit.

SEC. 194. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it shall be made upon affidavit; for any other cause, it shall be made upon a statement prepared as provided in the next section.

Prerequi-
sites to
motion for.

SEC. 195. The party intending to move for a new trial, shall give notice of the same within two days after the trial, and shall, within five days after such notice, prepare and file with the clerk the affidavit required by the last section, or a statement of the grounds upon which he intends to rely. If no affidavit or statement be filed within five days after the notice, the right to move for a new trial shall be deemed waived. The statement shall contain so much of the evidence, or reference thereto, as may be necessary to explain the grounds taken, and no more. Such statement, when containing any portion of the evidence of the case, and not agreed to by the adverse party, shall be settled by the judge, upon notice. On the argument, reference may also be made to the pleadings, depositions, and documentary evidence on file, and to the minutes of the court. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing. Any counter affidavits shall be filed with the clerk one day at least previous to the hearing.

Application,
when to be
made.

SEC. 196. The application for a new trial, or rehearing, shall be made at the earliest period practicable, after filing the affidavit or statement.

CHAPTER VIII.—*The Manner of Giving and Entering Judgment.*

SEC. 197. When trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within

twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

Judgment,
how and
when en-
tered.

SEC. 198. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

Argument
of case.

SEC. 199. If a counter-claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess; or, if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Where coun-
ter-claims
exceed de-
mands of
plaintiff.

SEC. 200. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

In action
for recovery
of personal
property.

SEC. 201. The clerk shall keep, among the records of the court, a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action.

Judgment
book.

SEC. 202. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may, nevertheless, render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

Death of
party.

SEC. 203. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment roll: First. In case the complaint be not answered by any defendant, the summons, with the affidavit, or proof of service, and the complaint, with a memorandum indorsed on the complaint, that the default of the defendant, in not answering, was entered, and a copy of the judgment. Second. In all other cases, the summons, pleadings, and a copy of the judgment, and any orders relating to a change of the parties.

Judgment
roll.

SEC. 204. Immediately after filing judgment roll, the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed, it shall become a lien upon all the real property of the judgment debtor, not exempt from execution in the county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

Lien of
judgment.

SEC. 205. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page

Docket,
how kept.

divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment; time of entry; where entered in judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

To be open
for inspect'n.

SEC. 206. The docket kept by the clerk shall be open at all times, during office hours, for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Judgment
lien in other
counties.

SEC. 207. A transcript of the original docket certified by the clerk, may be filed with the recorder of any other county, and from the time of the filing, the judgment shall become a lien upon all the real property of the judgment debtor, not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

Duration of
lien.

Satisfaction
of judgment,
how entered.

SEC. 208. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor; or within one year after the judgment by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon an execution, it shall be the duty of the party, or attorney, to give such acknowledgment, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

TITLE VII.

OF THE EXECUTION OF JUDGMENT IN CIVIL ACTION.

CHAPTER I.—*The Execution.*

Limit for
issue of
writ of.

SEC. 209. The party in whose favor judgment is given, may, at any time within five years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter [of this act].

Forms of.

SEC. 210. The writ of execution shall be issued in the name of the people of the United States, in the territory of Nevada, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, the names of the parties, the judg-

ment, and, if it be for money, the amount thereof, and the amount actually due thereon, and shall require the sheriff substantially as follows: First. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or, if the judgment be a lien upon real property, then out of the real property belonging to him on the day the judgment was docketed; or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or at any time thereafter. Second. If it be against real or personal property, in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property. Third. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor, and commit him to the jail of the county, until he pay the judgment, with interest, or be discharged according to law. Fourth. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this section.

SEC. 211. When a writ of execution is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants, and the individual property only of the defendants who were served, or who appeared in the action. In other respects, the writ shall contain the directions specified in the first subdivision of the last section.

SEC. 212. The execution may be made returnable at any time, not less than five, nor more than sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed.

SEC. 213. Where a judgment requires the payment of money, or the delivery of real or personal property, the same shall be enforced, in those respects, by execution. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is

On judgment
on joint
contract.

When
returnable.

Where judg-
ment re-
quires per-
formance of
other acts
than pay-
ment, etc.

given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced.

How issued
after two
years.

SEC. 214. After the lapse of two years from the entry of judgment, an execution shall be issued only by leave of the court, on motion. Such leave shall not be given, unless it be established by the oath of the party, or other proof, that the judgment, or some part thereof, remains unsatisfied and due; and after the lapse of five years from the entry thereof, all judgments shall be barred, and no action shall be maintained thereon, and no execution shall issue thereon.

After death
of party.

SEC. 215. Notwithstanding the death of a party after the judgment, execution thereon against his property may, upon permission granted by the probate court, be issued and executed, in the same manner, and with the same effect, as if he were still living.

May issue
to different
counties.

SEC. 216. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in the territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued, at the same time, to different counties.

Property
liable to.

SEC. 217. All goods, chattels, moneys and other property, real and personal, of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Until a levy, property shall not be affected by the execution. Shares and interests in any corporation or company, and debts and credits, and other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust, gold and silver bullion, shall be returned by the officer as so much money collected at its current value, without exposing the same to sale.

Proceedings
when prop-
erty is
claimed by
third parties.

SEC. 218. If the property levied on be claimed by a third person as his property, the sheriff shall summon from his county six persons, qualified as jurors between the parties, to try the validity of the claim. He shall also give notice of the claim, and of the time of trial, to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the sheriff, and if their verdict be in favor of the claimant, the sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff, and the witnesses, shall be paid by the claimant, if the verdict be against him; otherwise, by the plaintiff. On the trial the defendant and the claimant may be examined by the plaintiff as witnesses.

SEC. 219. The following property shall be exempt from execution, except as herein otherwise specially provided:

First. Chairs, tables, desks, and books, to the value of one hundred dollars, belonging to the judgment debtor. Second. Necessary household, table and kitchen furniture, belonging to the judgment debtor, including stove, stove pipe and stove furniture, wearing apparel, beds, bedding and bedsteads, and provisions actually provided for individual or family use, sufficient for one month. Third. The farming utensils, or implements of husbandry, of the judgment debtor, also, two oxen, or two horses, or two mules, and their harness; two cows, one cart or wagon, and food for such oxen, horses, cows or mules, for one month. Fourth. The tools and implements of a mechanic, necessary to carry on his trade, the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their profession, with the professional library, and the law libraries of an attorney and counselor. Fifth. The tent and furniture, including a table, camp stools, bed and bedding of a miner; also, his rocker, shovels, spades, wheelbarrows, pumps, and other instruments used in mining, with provisions necessary for his support for one month. Sixth. Two oxen, or two horses, or two mules, and their harness, and one cart or wagon, by the use of which a cartman, teamster, or other laborer, habitually earns his living, and food for such oxen, horses or mules, for one month; and a horse, harness and vehicle used by a physician or surgeon in making his professional visits. Seventh. All fire engines, with the carts, buckets, hose, and apparatus thereto appertaining, of any fire company or department, organized under any law of this territory. Eighth. All arms and accouterments required by law to be kept by any person; but no article mentioned in this section shall be exempt from execution issued on a judgment recovered for its price, or upon a mortgage thereon. Ninth. All court-houses, jails, public offices and buildings, lots, grounds, and personal property, belonging to any county of this territory, and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings appertaining to the fire department, and the lots and grounds thereunto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use.

Property exempt from.

SEC. 220. The sheriff shall execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment, or depositing the amount with the clerk of the court; any excess in the proceeds over the judgment and the sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the sheriff's fees, within the view of the sheriff, he shall levy on only such part

How satisfied.

of the property as the judgment debtor may indicate; *provided*, that the judgment debtor be present at, and indicate at the time of the levy, such part; and *provided*, that the property indicated be amply sufficient to satisfy such judgment and fees.

Sale of
property.

Notice, how
given.

Penalty for
selling with-
out notice.

Sales, how
made.

Purchaser
refusing to
pay, property
to be resold.

SEC. 221. Before the sale of property on execution, notice thereof shall be given, as follows: First. In case of perishable property, by posting written notice of the time and place of sale, in three public places of the township or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property. Second. In case of other personal property, by posting a similar notice in three public places of the township or city where the sale is to take place, not less than five nor more than ten days successively. In case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the township or city where the property is situated, and also where the property is to be sold; and publish a copy thereof once a week for the same period, in a newspaper in the county, if there be one.

SEC. 222. An officer selling without the notice prescribed by the last section, shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit five hundred dollars.

SEC. 223. All sales of property under execution shall be made at auction, to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon; after sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser at such sale. When the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest prices; and when the sale is of real property, and consists of several known lots or parcels, they shall be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately; and the sheriff shall be bound to follow such directions.

SEC. 224. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property, at any time, to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, by

motion, upon previous notice of five days, before any court, or before any justice of the peace, if the same shall not exceed his jurisdiction.

SEC. 225. Such court, or justice, shall proceed in a summary manner to give judgment, and issue execution therefor forthwith, but the defendant may claim a jury. And the same proceeding may be had against any subsequent purchaser who may refuse to pay, and the officer may, in his discretion, thereafter reject the bid of any person so refusing.

Proceedings
to enforce
payment of
loss of resale.

SEC. 226. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second, or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Amount for
which officer
is liable.

SEC. 227. When the purchaser of any personal property capable of manual delivery, shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest, which the debtor had in and to such property on the day the execution was levied.

Certificate of
sale, etc.

SEC. 228. When the purchaser of any personal property not capable of manual delivery, shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title and interest which the debtor had in and to such property on the day the execution was levied.

Same.

SEC. 229. Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases, the real property sold shall be subject to redemption, as provided in this chapter [of this act]. The officer shall give to the purchaser a certificate of the sale, containing—First. A particular description of the real property sold. Second. The price bid for each distinct lot or parcel. Third. The whole price paid. Fourth. When subject to redemption, it shall be so stated. A duplicate of which certificate shall be filed by the officer with the recorder of the county.

Sale of real
estate, when
absolute.

SEC. 230. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest: First. The judgment debtor, or his successor in interest, in the whole or any part of the property. Second. A creditor, having a lien by judgment or mortgage, on the property sold. The persons mentioned in the second subdivision of this act are, in this chapter [of this act], termed redemptioners.

When
subject to
redemption.

SEC. 231. The judgment debtor, or a redemptioner, may redeem the property from the purchaser within six months

Redemption,
how made..

after the sale, on paying the purchaser the amount of his purchase, with eighteen per cent. thereon in addition, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase, and the interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of the redemptioner other than the judgment under which the purchase was made, the amount of such lien, with interest.

Same.

SEC. 232. If the property be so redeemed by a redemptioner, either the judgment debtor, or another redemptioner, may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes, which the said last redemptioner may have paid thereon, after the redemption by him, with interest on such amount; and the amount of any liens held by said last redemptioner prior to his own, with interest in addition; *provided*, that the judgment under which the property was sold need not be paid as a lien. The property may be again, and as often as the debtor or redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the said last previous redemptioner paid after the redemption by him, with interest thereon; and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner, previous to his own, with interest. Notice of redemption shall be given to the sheriff. If no redemption be made within six months after the sale, the purchaser or his assignee shall be entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner or his assignee be entitled to a sheriff's deed. If the debtor redeem at any time before the time for redemption expires, the effects of the sale shall be terminated, and he be restored to his estate.

Same.

SEC. 233. The payment mentioned in the last [two] sections may be made to the purchaser, or redemptioner, as the case may be, or for him, to the officer who made the sale, and a tender of the money shall be equivalent to payment.

Same.

SEC. 234. A redemptioner shall produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the sheriff—First. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, or of the county, where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder. Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;

and, Third. An affidavit by himself, or his agent, showing the amount then actually due on the lien.

SEC. 235. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted, with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family, while he occupies the property.

Waste may
be restrained

SEC. 236. The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof; *provided*, that in case the property shall be redeemed as provided in this act, the amount of such rents and profits which may have been received by such purchaser or redemptioner, or which said purchaser or redemptioner may have been entitled to claim or receive, unless such claim shall be released to the person claiming such right of redemption, shall be deducted from the amount which such purchaser or redemptioner would be entitled to receive on such redemption.

Rents and
profits.

SEC. 237. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularity in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon, from the time of payment, at the same rate that the original judgment bore; and when so revived, the said judgment shall have the same effect as the original judgment of said court of that date, and bearing interest as aforesaid, and any other or after acquired property, rents, issues, or profits, of the said debtors, shall be liable to levy and sale under execution in satisfaction of such debt; *provided*, that no property of such debtor sold *bona fide* before the filing of such petition, shall be subject to the lien of said judgment; and *provided*, further, that notice of the filing of such petition shall be made by filing a notice thereof in the recorder's office

When purchaser may
recover price
paid from
judgment
creditor.

of the county where such property may be situated; and that said judgment shall be revived in the name of the original plaintiff, or plaintiffs, for the use of said petitioner, the party in interest. All sales ordered by the court shall be conducted in the same manner as sales upon execution.

CHAPTER II.—*Proceedings supplementary to the Execution.*

When judgment debtor may be required to answer.

SEC. 238. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgments issued to the sheriff of the county where he resides, or if he do not reside in this territory, to the sheriff of the county where the judgment roll is filed, is returned unsatisfied in whole or part, the judgment creditor, at any time after such return is made, shall be entitled to an order from a judge of the court, requiring such judgment debtor to appear and answer concerning his property, before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a judge or referee out of the county in which he resides, when proceedings are taken under the provisions of this chapter [of this act].

Person indebted to judgment debtor may pay execution.

SEC. 239. After the issuing of an execution against property, and upon proof upon affidavit of a party or otherwise, to the satisfaction of the court, or of a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient security, that he will attend from time to time before the judge or referee, as shall be directed during the pendency of proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

Debtor of judgment debtor, may be required to answer.

SEC. 240. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 241. After the issuing and return of an execution

against property of a judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may by an order require such person or corporation, or any officer or member thereof, to appear at a specified time and place, before him, or a referee appointed by him, and answer concerning the same.

Debtor to appear and answer.

SEC. 242. Witnesses may be required to appear and testify before the judge, or referee, upon any proceeding under this chapter [of this act], in the same manner as upon the trial of an issue.

Witnesses.

SEC. 243. The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or in part by his labor.

Property liable to execution.

SEC. 244. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order to that effect, the judgment creditor to institute a suit against such person or corporation for the recovery of such interest or debt; and the court or judge may, by an order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by a judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Court may order cross-action in certain cases

SEC. 245. If any person, party, or witness, disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference for a contempt.

Penalty for disobedience of order of referee.

TITLE VIII.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.—*Actions for the Foreclosure of Mortgages.*

SEC. 246. There shall be but one action for the recovery of debt, or the enforcement of any right secured by a mortgage, or lien upon real estate, or personal property, which shall be for an enforcement of said lien, or mortgage, in accordance with the provisions of this chapter. In such action, the court

Court, power of to direct sale of property.

shall have power before judgment, or decree, to direct a sale of the incumbered property, or such part thereof as shall be necessary, and the application of the proceeds to the payment of the costs and expenses of the sale, the costs of the writ, and the amount due to the plaintiff. If it shall appear from the sheriff's returns that there is a deficiency of such proceeds, and a balance still due to the plaintiff, the judgment shall be docketed for such balance, and shall, from the time of such docketing, be a lien upon the real estate of the judgment debtor, and an execution may be issued by the clerk of the court, as are other judgments against the property of the judgment debtor, to collect such balance or deficiency.

Surplus after
sale, how
disposed of.

SEC. 247. If there be surplus money remaining after the payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

Sale, when
debt is not
due.

SEC. 248. If the debt for which the mortgage, lien, or incumbrance is held, be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But, if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

Rebate of
interest.

CHAPTER II.—*Actions for Nuisance, Waste, and Willful Trespass, in certain cases, on Real Property.*

Nuisance
defined,
action for.

SEC. 249. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Judgment
for.

Waste,
action for.

SEC. 250. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Judgment
for.

Injuring
timber, etc.

SEC. 251. Any person who shall cut down or carry off any wood or underwood, tree or timber, on the land of another person, or on the street or highway in front of any person's house, village or city lots, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or

Liability for.

town, for treble the amount of damages which may be assessed therefor, in a civil action, in any court having jurisdiction.

SEC. 252. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated wood land, for the repair of a public highway or bridge upon the land, or adjoining it. Same.

SEC. 253. If a person recover damages for a forcible or unlawful entry in or upon, or detention of, any building, or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed. Forcible or unlawful entry, judgment for.

CHAPTER III.—*Actions to determine Conflicting Claims to Real Property, and other provisions relating to Actions concerning Real Estate.*

SEC. 254. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate, or interest therein, adverse to him, for the purpose of determining such adverse claim, estate, or interest. Action by person in possession.

SEC. 255. If the defendant in such action disclaim, in his answer, any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs. Costs, when not to be recovered.

SEC. 256. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact; and the plaintiff may recover damages for withholding the property. Action, where right has terminated during pendency.

SEC. 257. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages. Improvements, value of to be allowed.

SEC. 258. The court in which an action is pending for recovery of real property, or a judge thereof may, on motion, upon notice to either party, for good cause shown, grant an order allowing to such party the right to enter the property and make survey and measurement thereof, for the purpose of the action. Court may allow survey to be made.

SEC. 259. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property with necessary surveyors and assistants, and make such survey and measurements; but if any unnecessary injury be done to the property, he shall be liable therefor. Order for survey.

SEC. 260. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of Mortgage not to be

deemed
conveyance.

the mortgage to recover possession of the real property, without a foreclosure and sale.

Court may
enjoin injury

SEC. 261. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution, before a conveyance.

Damages for
injury, who
may recover.

SEC. 262. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance.

Action for
recovery not
prejudiced
by alienation

SEC. 263. An action for the recovery of real property against a person in possession, cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

CHAPTER IV.—*Actions for the Usurpation of an Office or Franchise.*

Action to be
brought by
district
attorney.

SEC. 264. An action may be brought by the district attorney, in the name of the people of the United States and territory of Nevada, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds, or exercises, any public office, civil or military, or any franchise within this territory. And shall be the duty of the district attorney to bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held, or exercised, by any person, or when he is directed to do so by the governor.

Complaint,
what to state

SEC. 265. Whenever such action is brought, the district attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

Defendant
may be
arrested.

Judgment,
how rendered.

SEC. 266. In every case, judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

When person
alleged to be
entitled may

SEC. 267. If the judgment be rendered upon the right of the person alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office,

and executing such official bond as may be required by law, to take upon himself the execution of the office. enter an office.

SEC. 268. If the judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained, by reason of the usurpation of the office by the defendant. Damages recoverable.

SEC. 269. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise. Rights of several may be tried in one action.

SEC. 270. When a defendant, against whom such action has been brought, is adjudged guilty of usurping, or intruding into, or unlawfully holding, any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may, also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, shall be paid into the treasury of the territory. Judgment when defendant has intruded into office.

TITLE IX.

APPEALS IN CIVIL ACTIONS.

CHAPTER I.—*Appeals in General.*

SEC. 271. A judgment, or order, in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this title, and not otherwise. Judgment, how reviewed.

SEC. 272. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made. Order, how vacated.

SEC. 273. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent. Parties designated.

SEC. 274. An appeal may be taken in chancery cases—
First. From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered, within one year after the rendition of the judgment. Second. From a judgment rendered on an appeal from the probate court, within ninety days after the rendition of the judgment. Third. From an order granting or refusing a new trial or a rehearing; from an order refusing to change the place of trial of an action or proceeding after a motion is made therefor, in the cases provided by law, or on the ground that the judge is disqualified from hearing or trying the same; from an order granting or dissolving an injunction, and from an order refusing to grant or dissolve an injunction, and from any special order made after final judgment, within sixty days after the order is made and entered in the minutes of the court. This In what cases an appeal may be taken.

section shall not extend to appeals to the district court from orders or judgments of the probate courts, but shall extend to judgments rendered in the district courts on such appeals.

How taken.

SEC. 275. The appeal shall be made by filing with the clerk of the court, with whom the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party, or his attorney.

Statement,
how annexed
to record,
what to
contain.

SEC. 276. When the party who has the right to appeal, wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall contain the grounds upon which he intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more; and shall file the same with the clerk. The respondent may, within five days thereafter, prepare amendments to the statement, and serve a copy on the appellant. If such amendments are admitted, the statement shall be corrected accordingly; and, if not admitted, the statement and amendments shall be presented to the judge who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such judge.

Waiver of.

SEC. 277. If the party shall omit to make a statement within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the statement as proposed, and the latter to have agreed to the amendment as proposed, and no settlement of the statement, or certificate thereto by the judge, shall be required.

Time may
be enlarged.

SEC. 278. The several periods of time above limited may be enlarged upon good cause shown by the judge before whom the cause was tried.

How
certified.

SEC. 279. The statement, when settled by the judge, shall be signed by him, with his certificate that the same has been allowed, and is correct; when the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them, and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

To be
annexed to
judgment
roll.

SEC. 280. The clerk shall annex the statement, if the appeal be from a final judgment to the judgment roll; if the appeal be from an order, to such order, or a copy thereof.

Certain sec-
tions not to
apply to
appeals from
order.

SEC. 281. The provisions of the last preceding sections shall not apply to appeals taken from an order made upon affidavit filed, but such affidavits shall be annexed to the order in the place of the statement mentioned in those sections.

SEC. 282. Upon an appeal from a judgment, the court may review any intermediate order involving the merits, and necessarily affecting the judgment. Appeal from judgment, what may be reviewed.

SEC. 283. Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify, any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if necessary or proper, order a rehearing. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order; and when it appears to the appellate court that the appeal was made for delay, it may add to the costs such damages as may be just. Same.

SEC. 284. On an appeal from a final judgment, the appellant shall furnish the court with a copy of the notice of appeal, the judgment roll, and the statement annexed (if there be one), certified by the clerk to be a correct copy. An appeal from a judgment rendered on an appeal, or from an order, the appellant shall furnish the court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used in the hearing of the court below; such copies to be certified by the clerk to be correct. If any written opinion be placed on file on rendering the judgment, or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers, the appeal may be dismissed. Duty of appellant.

CHAPTER II.—*Appeals to the Supreme Court from the District Court.*

SEC. 285. An appeal may be taken to the supreme court from the district courts, in the following cases: First. From a final judgment rendered in an action or special proceeding commenced in those courts, or brought into those courts from another court. Second. From an order granting or refusing a new trial or rehearing; from an order refusing to change the place of trial of an action, or proceeding, after a motion is made therefor, in the cases provided by law, or on the ground that a judge is disqualified from hearing or trying the same; from an order granting or dissolving an injunction, and from any special order made after final judgment. In what cases may be taken.

SEC. 286. To render an appeal effectual for any purpose, in any case, a written undertaking shall be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, not exceeding three hundred dollars; or that sum shall be deposited with the clerk, with whom the judgment or order was entered, to abide the event of the appeal. Undertaking of appellant.

Such undertaking shall be filed, or such deposit made with the clerk, within five days after the notice of appeal is filed.

Same, when
judgment
stayed by
appeal.

SEC. 287. If the appeal be from a judgment, or order, directing the payment of money, it shall not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties, stating their places of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order, that if the judgment or order appealed from, or any part thereof be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part; and all damages and costs which shall be awarded against the appellant, upon the appeal.

Same.

SEC. 288. If the judgment or order appealed from, direct the assignment or delivery of documents, or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered, be placed in the custody of such officer or receiver as the court may appoint; or, unless an undertaking be entered into, on the part of the appellant, with at least two sureties, and in such amount as the court or judge thereof, or probate judge, may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Same.

SEC. 289. If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal, until the instrument is executed and deposited with the clerk, with whom the judgment or order is entered, to abide the judgment of the appellate court.

Same.

SEC. 290. If the judgment or order appealed from direct the sale, or delivery of possession of real property, the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered, or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

Appeal perfected stays further proceedings.

SEC. 291. Whenever an appeal is perfected, as provided by the preceding sections in this chapter, it shall stay all further proceedings in the court below, upon the judgment or order appealed from, or upon the matter embraced therein;

but the court below may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from. And the court below may, in its discretion, dispense with or limit the security required by said sections when the appellant is an executor, administrator, trustee, or other person acting in another's right.

SEC. 292. The undertaking prescribed by sections two hundred and eighty-six, two hundred and eighty-seven, two hundred and eighty-eight, and two hundred and ninety, may be in one instrument, or several, at the option of the appellant.

Undertaking
in one or
several in-
struments.

SEC. 293. An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties, that they are each worth the amount specified therein, over and above all their just debts and liabilities, exclusive of the property exempt from execution; except, where the judgment exceeds three thousand dollars, and the undertaking on appeal is executed by more than two sureties, they may state in their affidavit that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before a judge of the court below, or a probate judge, or the county clerk, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavit, the appeal shall be regarded as if no such undertaking had been given; and in all cases where an undertaking is required on appeal, by the provisions of this chapter [of this act], a deposit in the court below of the [amount of the] judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived, by the written consent of the respondent.

Justification
of sureties
necessary.

SEC. 294. In cases not provided for in sections two hundred and eighty-seven, two hundred and eighty-eight, two hundred and eighty-nine, and two hundred and ninety, the perfecting of an appeal, by giving the undertaking and the justification of the sureties thereon, if required, or making the deposit mentioned in section two hundred and eighty-six, shall stay proceedings in the court below upon the judgment or order appealed from; except, that where it directs the sale of perishable property, the court below may order the property to be sold, and the proceeds thereof to be deposited shall abide the judgment of the appellate court.

Appeal, how
perfected in
cases not
provided for.

SEC. 295. Appeals in the supreme court may be brought to a hearing by either party, upon a notice of three days to the opposite party. Before the argument, each party shall furnish to the other a copy of his points, and file one copy thereof with the clerk.

Hearing of
appeal.

SEC. 296. When judgment is rendered upon the appeal, it

Judgment
on appeal.

shall be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of appeal from an order, the clerk shall enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from a reference to the certificate, with a brief statement that such order had been affirmed, reversed, or modified, as the case may be, by the supreme court, on appeal.

CHAPTER III.—*Appeals to the District Court from the Probate Court.*

In what
cases taken.

SEC. 297. An appeal may be taken from a probate court to the district court of the district in which the probate court is held, in the following cases: First. From an order or decree admitting a will to probate, or refusing the same. Second. From an order setting apart property, or making an allowance for the widow or children. Third. From an order granting letters testamentary, or of administration, or appointing a guardian of an infant, or of an insane person, or of a person incompetent to manage his property, or refusing to grant such letters, or to make such appointment, or making such letters or appointment. Fourth. From an order directing the sale or conveyance of real property. Fifth. From an order or decree by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or by which such allowance or direction is refused. Sixth. From an order made on the settlement of an executor, administrator, or guardian. Seventh. From a final judgment or order in an action for a divorce, and from any other final judgment or order made by said court, except in cases of appeal from justices' courts.

When to be
taken.

SEC. 298. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the clerk.

Hearing.

SEC. 299. Appeals from the probate court shall be brought to a hearing at the earliest period practicable. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed.

CHAPTER IV.—*Appeals to the Probate Courts from Justices' Courts.*

How taken
and tried.

SEC. 300. Judgments in all civil cases rendered by justices may be reviewed by the probate court. When the appeal is taken on questions of law alone, it shall be heard on a statement of the case prepared as prescribed in title nine of this act. When the appeal is taken on questions of fact, or on questions of both law and fact, the action shall be tried anew

in the probate court, and either party may, on such trial, demand a jury.

SEC. 301. Upon an appeal heard upon a statement of the case, the probate court may review all orders affecting the judgment appealed from, and may set aside, or confirm, or modify, any or all of the proceedings subsequent to or dependent upon said judgment, and may, if necessary or proper, order a new trial. When the action is tried anew on appeal, the trial shall be conducted in all respects as trials in the district court. The provisions of this act, as to changing the place of trial, and all the provisions as to trials in the district court, shall be applicable to trials on appeal in the probate court. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the probate court, after notice, may order the appeal to be dismissed. Judgments rendered in the probate court on appeal, shall have the same force and effect, to be enforced in the same manner, as judgments in actions commenced in the district court.

When heard
on statement
of case.

New trial.

How
conducted.

Dismissal.

Judgment.

TITLE IX.—CHAPTER I.

SEC. 302. Every final judgment, order, or decision of a district court, except in chancery, may be re-examined upon a writ of error in the same court for error in fact, in the supreme court for error in law.

Judgment,
etc., re-ex-
amined on
writ of error.

SEC. 303. Every such writ shall be prosecuted within one year, and not after. But if the party entitled to have such writ shall be absent from the territory, and shall not have been personally served with process, nor appeared to the action, or if such party be an infant, or married woman, or imprisoned, or insane, then such writ may be prosecuted within two years from the removal of such disability, and not after; *provided*, that the absence from the territory shall not entitle the party to a longer time than five years; the time limited shall include the day on which the judgment is rendered, or the order or decision is made, or on which the disability ceases.

Time for
prosecution
of writ.

Proviso.

SEC. 304. A writ of error shall be deemed to have issued on the day on which the plaintiff in error shall file in the office of the clerk of the district court, where the record is, a written undertaking, executed by two sureties, to be approved by the clerk, for the payment of all the costs of such proceeding; and it shall not be necessary, in any stage of the proceedings, actually to sue out the writ of error.

When
deemed
issued.

SEC. 305. On the filing of such undertaking, the clerk shall issue a notice to the defendant in error, under the seal of the court, specifying the court in which, and the time when he is to appear to protect his interests; and, if the *præcipe* direct the writ of error to be made returnable to the supreme court, he shall send thither a transcript of the record under the seal of the court. Such notice may be, as nearly as applicable, in the following form:

Notice to
defendant
in error.

Form of.

TERRITORY OF NEVADA,
County of ————.

To C—— D——.

You are hereby notified that A. B. has sued out a writ of error from the supreme court, to reverse the decision of the district court of said county, given in your favor against the said A. B. at the ——— term of 18—, and unless you appear in the said supreme court on the ——— Monday ——— 18—, the cause will be heard in your absence.

Witness the seal of the district court, the — day of —, 18—. E. F., [Seal.] Clerk.

How served.

SEC. 306. The notice may be served on the defendant in error, or his attorney of record, by any sheriff within his county, and shall be by delivering him a copy thereof, or it may be served by any other disinterested person; and the return of the sheriff indorsed thereon, or the affidavit of such other disinterested person, shall be evidence thereof, and if served ten days before the return day, the cause may be heard at that term. If returned not found, the court of error may make such order for the service or publication of notice, as shall appear most likely in the particular case, to convey knowledge of the proceeding to the defendant in error, and may then proceed as if the notice had been personally served.

Return of.

Transcript
of, what to
contain.

SEC. 307. The transcript shall contain a copy of the writ, and return, the pleadings, the journal entries and bills of exception, the execution and return, and such other matters as the court or judge shall have ordered to be made part of the record. Either party may have a *certiorari* to supply any diminution of the record.

Assigning
errors and
filing join-
ders.

SEC. 308. The court of error may affix the time for assigning errors and filing joinders. If errors in law be assigned, no joinder shall be necessary; one or more errors in fact may be assigned, and the defendant may put in the common joinder as a demurrer thereto, or may traverse or confess, and avoid the facts assigned for error, and a separate issue shall be made on each.

Judgment,
etc., com-
plained of
may be
affirmed or
reversed.

SEC. 309. The judgment or other matter complained of may be affirmed, or may be reversed or set aside, in whole or in part, or may be modified, or a different judgment or order may be substituted for that complained of, and the cause may be remitted to the district court, for such further proceedings as the supreme court by mandate shall direct. Execution may issue from the supreme court, or its judgments may be executed by the district court, on a mandate for that purpose.

Additional
undertaking
to pay judg-
ment.

SEC. 310. If the undertaking for costs contain an additional undertaking to pay the judgment, if affirmed, and damages, or any new or modified judgment that may be given against the plaintiff in error, then all further proceedings by way of executing the judgment shall forthwith cease until the

further order of the court of error. In such case, if the judgment be affirmed or modified, or any new judgment be given against the plaintiff in error, damages may be awarded to the defendant in error, not exceeding ten per cent. upon the amount of the judgment, exclusive of interest and costs, if it manifestly appears that the proceeding was without probable cause, and merely for delay. And in cases where judgment is rendered against the plaintiff in error, judgment shall also be rendered against the sureties in the undertaking, to the extent of their liability, and execution shall issue against them accordingly.

SEC. 311. The undertaking for a writ of error may be in the following form:

Undertaking
for writ of
error.

A. B. } District court, county of —, judgment at —
vs. } term, 18—. We promise to pay all costs that
C. D. } may be awarded against A. B. on his writ of error
in this cause (and also the judgment, if affirmed), and the
damages, or any new or modified judgment that may be given
against him. E. F.
G. H.

Form.

SEC. 312. If, after the undertaking be filed, either party shall die, or, being a single woman, shall marry, the proper persons may, on motion, be made parties, and the cause shall proceed to judgment.

Death, etc.,
of party
after filing
undertaking.

SEC. 313. Any person who may be a party or privy in any judgment, order, or decision, may prosecute a writ of error to reverse the same, and the reversal shall enure to the benefit of all parties and privies therein; and no other party or privy shall afterwards prosecute a writ of error for the same cause.

Prosecution
of writ of
error.

Reversal of
judgment.
etc.

SEC. 314. The reversal of a judgment, order, or decision, shall not affect the title of property sold upon an execution issued upon such judgment, order, or decision, if such property be purchased at the sale by a stranger, but if purchased by the judgment creditor, the plaintiff in error may bring an action for the recovery thereof, and the court may award restitution, or render such other judgment as justice shall require.

Not to affect
title of prop-
erty sold.

SEC. 315. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

Supreme
court, de-
cision of.

SEC. 316. Whenever, on the trial of an action at law in the district court, it shall be found to turn on important or doubtful principles of law, the court may direct a special verdict to be found, and in all cases the parties may agree upon the facts, and such agreement, in writing, signed by the parties or their attorneys, shall be made part of their record; and all questions of law arising on special verdicts, agreed cases, motions for new trials, and all others in any manner arising in the district courts, in law or equity, may be adjourned into the supreme

Questions of
law, etc., on
special ver-
dicts, ad-
journd to
supreme
court.

court for decision; and the supreme court may give judgment, or remand the cause, or make any order according to the law and justice of the case.

TITLE X.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I.—*Proceedings against Joint Debtors.*

How those
not served
may be
bound by
judgment.

SEC. 317. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section thirty-two, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

Summons to
show cause.

SEC. 318. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint.

Same.

SEC. 319. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied; and shall specify the amount due thereon.

Answer and
defense.

SEC. 320. Upon such summons the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitation.

Where de-
fendant de-
nies liability.

SEC. 321. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer, shall constitute such written allegations.

Issues
formed,
how tried.

SEC. 322. The issues formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.—*Confession of Judgment without Action.*

May be
entered.

SEC. 323. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defend-

ant, or both, in the manner prescribed by this chapter [of this act].

SEC. 324. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect: How entered. First. It shall authorize the entry of judgment for a specified sum. Second. If it be for money due, or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due, or to become due. Third. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

SEC. 325. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall indorse upon it, and enter in the judgment book, a judgment of such court for the amount confessed, with ten dollars costs. To be filed. The statement and affidavit, with the judgment indorsed, shall thereupon become the judgment roll.

CHAPTER III.—*Submitting a Controversy without Action.*

SEC. 326. Parties to a question in difference which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. How controversy may be submitted But it must appear, by affidavit, that the controversy is real and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment thereon, as if an action were depending.

SEC. 327. Judgment shall be entered in the judgment book, as in other cases, but without costs, for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll. Judgment, how entered.

SEC. 328. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal. How enforced.

CHAPTER IV.—*Of Arbitrations.*

SEC. 329. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property. What may be submitted

SEC. 330. The submission to arbitration shall be in writing, and may be to one or more persons. How submission made.

SEC. 331. It may be stipulated in the submission, that it be entered as an order of the district court, for which purpose it shall be filed with the clerk of such court in the district where Same, revocation of.

the parties, or one of them reside. The clerk shall thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court, in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

Award, how
enforced.

SEC. 332. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

Power of
arbitrators.

SEC. 333. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting, they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

Proceedings
of arbitrators

SEC. 334. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit, showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

Award, how
made, effect
of.

SEC. 335. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion: First. That it was procured by corruption or fraud. Second. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced. Third. That the arbitrators exceeded their powers in making their award; or, that they refused, or improperly omitted to consider a part of the matters submitted to them; or, that the award is indefinite, or cannot be performed.

In what case
vacated.

SEC. 336. The court may, on motion, modify or correct the award, where it appears—First. That there was a miscalculation in figures, upon which it was made, or that there is a mistake in the description of some person or property therein. Second.

In what case
modified.

When a part of the award is upon matters not submitted, which can be separated from other parts, and does not affect the decision on the matter submitted. Third. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

SEC. 337. The decision upon the motion shall be subject to appeal or writ of error, in the same manner as an order which is subject to appeal or writ of error in a civil action; but the judgment entered before a motion is made shall not be subject to appeal or writ of error. Appeal.

SEC. 338. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration. Submission
revoked,
amount re-
coverable.

CHAPTER V.—*Offer of the Defendant to Compromise the Whole or a Part of an Action.*

SEC. 339. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk shall enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer. Offer to com-
promise not
to prejudice.

TITLE XI.

OF WITNESSES, AND THE MANNER OF OBTAINING EVIDENCE.

CHAPTER I.—*Of Witnesses.*

SEC. 340. All persons, without exception, otherwise than as specified in this chapter [of this act], may be witnesses in any action or proceeding. No person offered as a witness shall be excluded on account of his opinions on matters of religious belief, nor shall any person be excluded on account of his interest in the event of the action or proceedings, except in the following cases: First. When he is a party to the action or proceeding, or the action or proceeding is prosecuted or defended for his immediate benefit. Second. When his interest is a present, certain, and vested interest. Who may be.

Religious
belief not
to disqualify.

Interest,
when to
disqualify.

SEC. 341. The true test of the interest of a person, which shall render him incompetent as a witness, shall be, that he will gain or lose by the direct legal operation and effect of the judgment, or that the record of the judgment will be legal evidence for or against him in some other action; but nothing in this, or in the last section, shall prevent a party Test of.

calling as a witness the adverse party to the action, or a person whose interest is adverse, nor a party being a witness in the case mentioned in section three hundred and seventy.

Who shall
not be wit-
nesses.

SEC. 342. The following persons shall not be witnesses: First. Those who are of unsound mind at the time of their production for examination. Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. Third. Indians, or persons having one half or more of Indian blood, and negroes, or persons having one half or more of negro blood, in an action or proceeding to which a white person is a party. Fourth. Persons against whom judgment has been rendered upon a conviction for a felony, unless pardoned by the governor, or such judgment has been reversed on appeal.

Husband
and wife
cannot be
witnesses
against
each other.

SEC. 343. A husband shall not be a witness for or against his wife, nor a wife a witness for or against her husband; nor can either, during the marriage, or after, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. But this exception shall not apply to an action or proceeding by one against the other.

Attorney not
to disclose
communica-
tion of client

SEC. 344. An attorney or counselor shall not, without the consent of his client, be examined as a witness to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Clergyman
not to dis-
close con-
fession.

SEC. 345. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Physician
not to dis-
close inform-
ation given
by patient

SEC. 346. A licensed physician or surgeon shall not, without the consent of his patient, be examined as a witness, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

Public offi-
cers not to
disclose, etc.

SEC. 347. A public officer shall not be examined as a witness to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Judge or
juror may be
witness.

SEC. 348. The judge himself, or any juror, may be called as a witness by either party; but in such case it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge and jury.

Interpreters.

SEC. 349. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

CHAPTER II.—*Manner of compelling the Attendance of Witnesses, and their Rights and Duties.*

SEC. 350. A subpoena may require not only the attendance

of the person to whom it is directed, at a particular time and place, to testify as a witness, but may also require him to bring any books, documents, or other things in his control, to be used as evidence. No person shall be required to attend as a witness before any court, judge, justice, or any other officer, out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Subpena,
duces tecum.

When not
required
to attend.

SEC. 351. The subpoena shall be issued as follows: First. To require attendance before a court, or at the trial of an issue therein, it shall be issued in the name and under the seal of the court before which the attendance is required, or in which the issue is pending. Second. To require attendance out of court, before a judge, justice, or any other officer authorized to administer oaths, or take testimony in any matter, under the laws of this territory, it shall be issued by the judge, justice, or other officer before whom the attendance is required. Third. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory, or county, it may be issued by any judge or justice of the peace, in places within their respective jurisdictions, with like power to enforce attendance, and upon certificate of contumacy to said court, to punish contempt of their process, as such judge or justice could exercise, if the subpoena directed the attendance of the witness before their courts in a matter pending therein.

Subpena,
how issued.

SEC. 352. The service of a subpoena shall be made by showing the original, and delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any person.

How served.

SEC. 353. If a witness be concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any court or judge, or any officer issuing the subpoena, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the sheriff of the county serve the subpoena, and the sheriff shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

Same.

SEC. 354. A person present in court, or before a judicial officer, may be required to testify, in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

Person present need not be subpoenaed

SEC. 355. It shall be the duty of a witness, duly served with a subpoena, to attend at the time appointed, with any papers under his control required by the subpoena, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

Duty of witness.

SEC. 356. A witness shall answer questions legal and pert-

What questions witness must answer.

inent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which shall have a tendency to subject him to punishment for a felony, nor need he give an answer which shall have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

Penalty for disobedience to subpoena.

SEC. 357. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court, or officer issuing the subpoena, or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed, or his answer stricken out.

Same.

SEC. 358. A witness disobeying a subpoena, shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damages may be recovered in a civil action.

Failure to attend, may be arrested.

SEC. 359. In case of failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness, and bring him before the court or officer where his attendance was required.

Confinement in jail.

SEC. 360. If the witness be a prisoner, confined in a jail or prison within this territory, for any other cause than a sentence for felony, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made as follows: First. By the court itself, in which the action or special proceeding is pending. Second. By a judge of the supreme court, district court, or probate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

Testimony, how taken.

Same.

SEC. 361. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Same.

SEC. 362. If the witness be imprisoned in the county where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required. In all other cases, his examination, when allowed, shall be taken upon deposition.

Witness exonerated from arrest.

SEC. 363. Every person who has been in good faith served with a subpoena to attend as a witness before a court, judge, commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest, in a civil action, while going to the place of attendance, necessarily remaining there, and returning therefrom.

SEC. 364. The arrest of a witness contrary to the last sec-

tion shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating—First. That he has been served with a subpoena to attend as a witness before a court, officer, or other person; specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued. Second. That he has not been thus served by his own procurement with the intention of avoiding an arrest. Third. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena. The affidavit may be taken by the officer, and shall exonerate him from liability for discharging the witness when arrested.

Liability of officer making arrest.

CHAPTER III.—*Of the Examination of Parties to an Action or Proceeding, and of Persons for whose immediate benefit such Action or Proceeding is Prosecuted or Defended.*

SEC. 365. No action to obtain a discovery under oath, in aid of the prosecution or defense of another action or proceeding, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner provided by this chapter [of this act].

Discovery under oath, how had.

SEC. 366. A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of any one of several adverse parties; and for that purpose may be compelled, in the same manner, and subject to the same rules of examination, as any other witness to testify at the trial, and he may be examined on a commission.

Party may be examined at instance of adverse party.

SEC. 367. The examination of a party, thus taken, may be rebutted by adverse testimony.

May be rebutted.

SEC. 368. If a party refuse to attend and testify at the trial, or to give his deposition before trial, or upon a commission, when required, his complaint, answer or reply may be stricken out, and judgment be taken against him; and he may be, also, in the discretion of the court, proceeded against as in other cases for a contempt.

Party refusing to testify judgment to go against him.

SEC. 369. A person for whose immediate benefit the action is prosecuted, or defended, though not a party to the action, may be examined as a witness in the same manner, and subject to the same rules of examination as if he were named as a party. And a party to an action or proceeding, may be examined as a witness in his own behalf, the same as any other witness; but such examination shall not be had, nor shall any other person for whose immediate benefit the same is prosecuted or defended, be so examined, unless the adverse party, or person in interest, is living, nor when the opposite party shall be the assignee, administrator, executor, or legal representative of a deceased person, nor unless ten days' notice of such intended examination of the party or person interested,

Examination of witness in his own behalf.

specifying the points upon which such party or person is intended to be examined, shall be given in writing to the adverse party, except that in special proceedings of a summary nature, such reasonable notice of such intended examination shall be given as shall be prescribed by the court or judge. And when notice of such intended examination shall be given in an action or proceeding, in which the opposite party shall reside out of the jurisdiction of the court, such party may be examined by commission issued and executed as now provided by law; and whenever a party or person in interest, has been examined under the provisions of this section, the other party or person in interest, may offer himself as a witness in his own behalf, and shall be so received. When an assignor in a thing in action, or contract, is examined as a witness on behalf of any person deriving title through, or from him, the adverse party may offer himself as a witness to the same matter in his own behalf, and shall be so received, and to any matter that will discharge him from any liability that the testimony of the assignor tends to render him liable for. But such assignor shall not be permitted to be examined on behalf of any person deriving title through, or from him, against an assignee, or an executor or administrator, unless the other party to such contract, or thing in action, whom the defendant or plaintiff represents, is living, and his testimony can be procured for such examination; nor at least ten days' notice of such intended examination of the assignor, specifying the points upon which he is intended to be examined, shall be given in writing to the adverse party. This section shall not be held to impair, or in any way affect the existing provisions of law by which persons of Indian, or negro blood, are excluded from being witnesses.

When parties may be witness in own behalf.

SEC. 370. Parties may be witnesses on their own behalf, when the action is brought for the settlement of or in relation to the business and accounts of a copartnership then existing, or which had previously existed between them, to prove vouchers or items of account under one hundred dollars.

CHAPTER IV.—*On Affidavits.*

How taken.

SEC. 371. An affidavit to be used before any court, judge, or officer of this territory, may be taken before any judge or clerk of any court, or any justice of the peace, or notary public in this territory.

In another state or territory.

SEC. 372. An affidavit taken in another state or territory of the United States, to be used in this territory, shall be taken before a commissioner appointed by the governor of this territory to take affidavits and depositions in such other state or territory, or before a judge of a court of record having a seal.

In foreign country.

SEC. 373. An affidavit taken in a foreign country to be used in this territory, shall be taken before an ambassador, minister, or consul of the United States, or before any judge of a court of record having a seal in such foreign country.

SEC. 374. When an affidavit is taken before a judge of a court in another state or territory, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof.

How certified when taken out of territory.

CHAPTER V.—*Depositions taken in this Territory.*

SEC. 375. The testimony of a witness in this territory, may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, after a question of fact has arisen therein, in the following cases: First. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended. Second. When the witness resides out of the county in which his testimony is to be used. Third. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required. Fourth. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

In what cases may be taken.

SEC. 376. Either party may have the deposition taken of a witness in this territory, before any judge or clerk, or any justice of the peace, or notary public in this territory, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is one mentioned in the last section, at any time during the forty days immediately after the service of the summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, the notice required by this section may be served on the clerk of the court where the action is pending. Such notice shall be at least five days, and in addition, one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless for a cause shown, a judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

How taken.

SEC. 377. Either party may attend such examination, and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness, and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed, and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial, or other proceeding, against any party giving or receiving the notice, sub-

Manner of examination

Manner of transmission

ject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by the reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent, or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may be also read in case of the death of the witness.

May be used
by either
party.

SEC. 378. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it.

CHAPTER VI.—*Of Depositions taken out of this Territory.*

When
may be.

SEC. 379. The testimony of a witness out of the territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and, in a special proceeding, at any time after a question of fact has arisen therein.

How taken.

SEC. 380. The deposition of a witness out of this territory shall be taken upon commission issued from the court, under the seal of the court, upon an order of the judge, or court, or probate judge, on the application of either party, upon five days previous notice to the other. It shall be issued to a person agreed upon by the parties, or, if they do not agree, to any judge or justice of the peace selected by the officer granting the commission, or to a commissioner appointed by the governor of this territory to take affidavits and depositions in other states.

Settling in-
terrogatories

SEC. 381. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the commission; or, when the parties agree to that mode, the examination may be without written interrogatories.

Commission,
what to
contain.

SEC. 382. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories, in respect to the question in dispute; and to certify the deposition to the court, in a sealed envelope, directed to the clerk, or other person designated or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

Postponem't
of trial for
non-return
of.

SEC. 383. A trial, or other proceeding, shall not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the court, that the testimony of the

witness is necessary, and that proper diligence has been used to obtain it.

CHAPTER VII.—*Of Proceedings to Perpetuate Testimony.*

SEC. 384. The testimony of a witness may be taken and perpetuated, as provided in this chapter [of this act].

Testimony,
how perpet-
uated.

SEC. 385. The applicant shall produce to a district judge, or to a probate judge, an affidavit stating—First. That the applicant expects to be a party to an action in a court of this territory, and in such case, the name or names of the person or persons whom he expects will be adverse parties; or, Second, That the proof of some fact or facts is necessary to perfect the title to property in which he is interested, or to establish marriage descent, heirship, or any other matter which may hereafter become material to establish, though no suit may at the time be anticipated, or if anticipated, he may not know the parties to such suit; and, Third. The name or names of the witness or witnesses to be examined at his or their place of residence, and a general outline of the facts expected to be proved. The judge to whom such petition is presented shall make an order allowing the examination and prescribing the notice to be given, which notice, if the parties are known and reside in this territory, shall be personally served on them; and if unknown, such notice shall be served on the clerk of the county where the property to be affected by such evidence is situated, and a notice thereof published in some newspaper to be designated by the judge making the order.

Manner of
proceeding.

SEC. 386. Upon proof of service of the notice, as provided in the last section, it shall be the duty of the judge before whom the depositions are ordered to be taken, to proceed to take the depositions of the witnesses named in said petition, upon the facts herein set forth; and the taking of the same may be continued from time to time, in the discretion of the judge.

Same.

SEC. 387. The examination shall be by question and answer, unless the parties otherwise agree. The deposition, when taken, shall be carefully read to and subscribed by the witness, then certified by the judge, and immediately thereafter filed in the office of the clerk of the district court of the county where the same was taken; together with the order for the examination, the petition on which the same was granted, and the proof of service of notice.

Same.

Examina-
tion and
deposition.

SEC. 388. The affidavits or other proof filed with the deposition, or certified copies thereof, shall be *prima facie* evidence of the facts stated therein.

Affidavit,
effect of.

SEC. 389. If a trial be had between the persons named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death or insanity of the witness or witnesses, or of his or their inability to attend the trial, by reason of age,

Deposition,
when to be
used as
evidence.

sickness, or settled infirmity, the deposition or depositions, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the examination.

CHAPTER VIII.—*Administration of Oaths and Affirmations.*

Who
authorized.

SEC. 390. Every court of this territory, every judge or clerk of any court, every justice of the peace, and every notary public, and every officer authorized to take testimony, or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

How ad-
ministered.

SEC. 391. When a person is sworn who believes in any other than the christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Affirmation,
form of.

SEC. 392. Any witness who desires it, may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting, when addressed, in the following form: "You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between — and —, shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

CHAPTER IX.—*Inspection of Documents, and Miscellaneous Provisions as to Records and Writings.*

Court may
order party
to allow.

SEC. 393. Any court in which an action is pending, or a judge thereof, or probate judge, may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of any book, document, or paper in his possession, or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence; or, if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness.

Evidence of
the contents
of a writing.

SEC. 394. There shall be no evidence of the contents of a writing other than the writing itself, except in the following cases: First. When the original has been lost or destroyed; in which case, proof of the loss or destruction shall first be made. Second. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice. Third. When the original is a record, or other document, in the custody of a public officer. Fourth. When the original has been recorded, and a certified

copy of the record is made evidence by statute. Fifth. When the original consists of numerous accounts, or other documents, which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

SEC. 395. The party producing a writing as genuine, which has been altered, or appears to have been altered after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

Alterations
in writing
to be ac-
counted for.

SEC. 396. A judicial record of this territory, or of the United States may be proved by the production of the original, or a copy thereof, certified by the clerk or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record.

Judicial
record, how
proved.

SEC. 397. The records and judicial proceedings of the courts of any state of the United States, may be proved or admitted in the courts of this territory by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form.

Same.

SEC. 398. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk, with the seal of the court annexed, if there be a clerk and seal; or by the legal keeper of the record, with the seal of his office annexed, if there be a seal, to be a true copy of such record; together with a certificate of a judge of the court, that the person making the certificate is the clerk of the court, or the legal keeper of the record, and in either case [that] the signature is genuine, and the certificate in due form; and also, together with the certificate of the minister or ambassador of the United States, or of a consul of the United States in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signature of the judge and clerk, or other legal keeper of the record.

Judicial
record of for-
eign country
how proved.

SEC. 399. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof—First. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it. Second. That such original was in the custody of the clerk of the court, or other legal keeper of the same; and, Third. That the copy is duly attested by a seal, which is proved to be the seal of the court where the record remains, if it be the record of a court; [or, if there be no such seal, or if it be not a record of a court,] by the signature of the legal keeper of the original.

Copy of,
when admis-
sible.

Printed
volumes of
statutes to
be admitted
as evidence.]

SEC. 400. Printed copies, in volumes of statutes, code, or other written law, enacted by any other state or territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such state, territory, or government, shall be admitted by the courts and officers of this territory on all occasions, as presumptive evidence of such laws.

Seal of court,
how im-
pressed.

SEC. 401. A seal of a court or public office, when required to any writ, or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process, or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

TITLE XII.

OF THE WRIT OF CERTIORARI AND OF MANDAMUS.

CHAPTER I.—*The Writ of Certiorari, or Review.*

Denomina-
tion.

SEC. 402. The writ of *certiorari* may be denominated the writ of review.

By what
courts, and
in what cases
granted.

SEC. 403. This writ may be granted on application by any court of this territory except a justice's court; the writ shall be granted in all cases where an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any other plain, speedy, and adequate remedy.

Application
for, how
made.

SEC. 404. The application shall be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

To whom to
be directed.

SEC. 405. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ, with the transcript required.

Writ, what
to contain.

SEC. 406. The writ of review shall command the party to whom it is directed, to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

Same.

SEC. 407. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted in the sound discretion of

the court; but if omitted, the power of the inferior court or officer shall not be suspended nor the proceedings stayed.

SEC. 408. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court. How served

SEC. 409. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer, has regularly pursued the authority of such tribunal, board, or officer. Review upon extent of.

SEC. 410. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling, or modifying the proceedings below. Return of judgment.

SEC. 411. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up. Copy of to be transmitted.

SEC. 412. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner, and upon the same terms as from a judgment in a civil action. Judgment roll. Appeal.

CHAPTER II.—*The Writ of Mandate or Mandamus.*

SEC. 413. The writ of *mandamus* may be denominated the writ of mandate. Denominat'n

SEC. 414. It may be issued by any court in this territory, except a justice's court, to any inferior tribunal, corporation, board or person, to compel the performance of an act, which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. By what court and in what cases may be issu'd

SEC. 415. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy, in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested. Same.

SEC. 416. The writ shall be either alternative or peremptory: the alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted. To be either alternative or peremptory defined.

When alternative or peremptory to be issued.

Notice of application.

Answer to writ.

When court may order trial by jury.

Objection to sufficiency of answer.

New trial.

Duty of clerk to transmit a verdict.

Argument of application.

Same.

SEC. 417. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

SEC. 418. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served, may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

SEC. 419. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

SEC. 420. On the trial, the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

SEC. 421. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement prepared as provided in section one hundred and ninety-five. The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried, either in term or vacation. If a new trial be granted the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

SEC. 422. If no notice of a new trial be given, or if given be denied, the clerk, within five days after the rendition of the verdict or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

SEC. 423. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in section four

hundred and nineteen, but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the court shall proceed to hear, or fix a day for hearing the argument of the case.

SEC. 424. If judgment be given for the applicant, he shall recover the damages which he shall have sustained as found by the jury, or as may be determined by the court, or referees, upon a reference to be ordered, together with costs; and for such damages and costs, an execution may issue, and a peremptory mandate shall also be awarded without delay.

Judgment
execution.

SEC. 425. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court.

Writ, how
served.

SEC. 426. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any orders necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a judge or officer who draws a salary from the territory or county, a certified copy of the order shall be forwarded to the auditor, or county treasurer, as the case may be, and the amount thereof may be retained from the salary of such judge or officer. Such judge or officer, for his willful disobedience, shall also be deemed guilty of a misdemeanor in office.

Penalty for
disobeying
peremptory
mandamus.

TITLE XIII.

OF CONTEMPTS AND THEIR PUNISHMENTS.

SEC. 427. The following acts or omissions shall be deemed contempts: First. Disorderly, contemptuous, or insolent behavior towards the judge whilst holding court, or engaged in his judicial duties at chambers, or towards referees or arbitrators whilst sitting on a reference or arbitration, tending to interrupt the due course of a trial, reference, or arbitration, or other judicial proceeding. Second. A breach of the peace, boisterous conduct, or violent disturbance, in presence of the court or its immediate vicinity, tending to interrupt the due course of a trial, or other judicial proceeding. Third. Disobedience or resistance to any lawful writ, order, rule or process, issued by the court or judge at chambers. Fourth. Disobedience of a subpoena duly served, or refusing to be sworn,

Contempt,
what
deemed.

or answer as a witness. Fifth. Rescuing any person or property in the custody of any officer, by virtue of an order or process of such court or judge at chambers.

When punishable summarily.

SEC. 428. When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily; for which an order shall be made reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court, or judge at chambers, an affidavit shall be presented to the court or judge, of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

Attachment for commitment for, when issuable.

SEC. 429. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

Bail.

SEC. 430. Whenever a warrant of attachment is issued pursuant to this chapter [of this act], the court or judge shall direct, by an indorsement on each warrant, that the person charged may be let to bail for his appearance in an amount to be specified in such indorsement.

Duty of sheriff.

SEC. 431. Upon executing the warrant of attachment, the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Discharge from arrest.

SEC. 432. When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he shall be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant, and abide the order of the court or judge thereupon; or they will pay, as may be directed, the sum specified in the warrant.

How effected

SEC. 433. The officer shall return the warrant of arrest and the undertaking, if any, received by him from the person arrested, by the return day specified therein.

Return of warrant.

SEC. 434. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

SEC. 435. Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both. Penalty, if found guilty.

SEC. 436. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have performed it, and in that case the act shall be specified in the warrant of commitment. Same, for omission to perform certain acts within power.

SEC. 437. Persons proceeded against according to the provisions of this chapter [of this act], shall also be liable to indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted. Indictment:

SEC. 438. When the warrant of arrest has been returned served, if the persons arrested do not appear on the return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceeding. Proceeding when defendant does not appear.

SEC. 439. Whenever by the provisions of this chapter [of this act], an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a court or judge, the inability from illness or otherwise of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance. Duty of officer having defendant in custody.

SEC. 440. The judgment and orders of the court or judge made in cases of contempt, shall be final and conclusive. The punishment shall be by fine or imprisonment, but no fine shall exceed the sum of five hundred dollars, and no imprisonment shall exceed the period of five days, except as provided in section four hundred and thirty-six. Judgment to be final. Punishment.

TITLE XIV.

OF COSTS.

SEC. 441. The measure and mode of compensation of attorneys and counselors shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in any action in the supreme court, district court, and probate courts, his costs and necessary disburse- Compensation of attorney; prevailing party allowed.

ments in the action, or special proceeding in the nature of an action.

When allowed, of course, to plaintiff.

SEC. 442. Costs shall be allowed, of course, to the plaintiff upon a judgment in his favor in the following cases: First. In an action for the recovery of real property. Second. In an action to recover the possession of personal property when the value of the property amounts to one hundred dollars or over. Such value shall be determined by the jury, court or referee by whom the action is tried. Third. In an action for the recovery of money or damages where the plaintiff recovers one hundred dollars or over. Fourth. In a special proceeding in the nature of an action.

When several actions on one cause.

SEC. 443. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this territory; but the disbursements of the plaintiff shall be allowed to him in each action.

When allowed, of course, to defendant.

SEC. 444. Costs shall be allowed, of course, to the defendant upon a judgment in his favor in the actions mentioned in section four hundred and forty-two, and in a special proceeding in the nature of an action.

When allowed or not.

SEC. 445. In other actions than those mentioned in section four hundred and forty-two, costs may be allowed or not; and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than one hundred dollars.

When plaintiff fails to recover against all defendants.

SEC. 446. When there are several defendants in the actions mentioned in section four hundred and forty-two, not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

Of appeal.

SEC. 447. In the following cases, the costs of an appeal, or writ of error, shall be in the discretion of the court: First. When a new trial is ordered. Second. When the judgment is modified.

Of referees.

SEC. 448. The fees of referees shall be fifteen dollars to each for every day spent in the business of the reference, and the parties shall not agree upon any other rate of compensation in writing, nor shall any other rate of compensation be allowed by the court.

SEC. 449. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

Costs when trial postponed.

SEC. 450. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

When defendant has tendered amount due.

SEC. 451. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or person expressly authorized by statute, costs may be recovered as in action by and against a person prosecuting or defending in his own right, but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

In action where administrator, etc., is party.

SEC. 452. When the decision of a court of inferior jurisdiction, in a special proceeding, is brought before a court of higher jurisdiction for a review, in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

On review.

SEC. 453. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the clerk of the court, within two days after the verdict or decision of the court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum shall be verified by the oath of the party, or his attorney, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

Memorandum of, to be delivered to clerk.

SEC. 454. The clerk shall include, in the judgment entered up by him, the costs, per centage allowed, and any interest on the verdict from the time it was rendered.

To be included in judgment.

SEC. 455. When the plaintiff in an action resides out of the territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

Security for costs.

Same.

SEC. 456. Each of the sureties on the undertaking mentioned above, shall annex to the same an affidavit that he is a resident and householder or freeholder within the county, and is worth double the amount specified in the undertaking, over and above all just debts and liabilities, exclusive of property exempt from execution.

Same.

SEC. 457. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

TITLE XV.

OF MOTIONS, ORDERS, SERVICE OF PAPERS, AND MISCELLANEOUS PROVISIONS.

Motions, etc.
defined.

SEC. 458. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Where to
be made.

SEC. 459. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district.

Notice of.

SEC. 460. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing; otherwise ten days; but the court, or judge, or probate judge, may prescribe a shorter time.

May be
transferred.

SEC. 461. When a notice of motion is given, or an order to show cause is made returnable before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge, before whom it might originally have been brought.

Service of
papers, how
made.

SEC. 462. Written notices and other papers, when required to be served on the party or attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this title shall be applicable to original or final process, or any proceedings to bring a party into contempt.

Same.

SEC. 463. The service may be personal, by delivery to the party, or attorney, on whom the service is required to be made, or it may be as follows: First. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open, so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then

by putting the same, inclosed in an envelope, into the post office, directed to such attorney. Second. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, inclosed in an envelope, into the post office, directed to such party.

SEC. 464. Service by mail may be made, where the person making the service, and the person on whom it is to be made, reside in different places, between which there is a regular communication by mail. When served by mail.

SEC. 465. In case of service by mail, the notice, or other paper, shall be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case, the time of service shall be increased one day for every twenty miles distance between the place of the deposit and the place of the address. Same.

SEC. 466. A defendant shall be deemed to appear in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or paper need not be made upon him, unless he be imprisoned for want of bail. When defendant deemed to have appeared.

SEC. 467. When a plaintiff, or a defendant, who has appeared, resides out of the territory, and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, shall be upon the attorney instead of the party, except of subpoenas, or writs, and other process issued in the suit, and of papers to bring him into contempt. Service of, after appearance.

SEC. 468. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom. Service of, on attorney.

SEC. 469. Whenever two or more actions are pending at one time, between the same parties, and in the same court, upon causes of action which might have been joined, the court may order the actions to be consolidated into one. Successive actions on same contract.

SEC. 470. An action may be brought by one person against another, for the purpose of determining an adverse claim which the latter makes against the former, for money or property, upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as security. When may be consolidated.

SEC. 471. The clerk shall keep among the records of the court, two registers of actions, one for action at law and the other for proceedings at chancery. He shall enter in them respectively, the title of the action, with brief notes under it, Action to settle adverse claim.

Register of actions.

from time to time, of all papers filed, and proceedings had therein.

Referees,
majority
may act.

SEC. 472. When there are three referees, or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

Time, how
computed.

SEC. 473. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded.

Paper with-
out the title
of the action

SEC. 474. An affidavit, notice, or other paper, without the title of the action, or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

TITLE XVI.

OF PROCEEDINGS IN CIVIL CASES IN JUSTICES' COURTS.

CHAPTER I.—*Of the Parties, and the Time and Place of Commencing Actions in Justices' Courts.*

Parties to
action.

SEC. 475. The provisions of title one, of this act, as to parties to actions, shall be applicable to actions of which a justice's court has jurisdiction; the word "justice" being substituted for the word "clerk," and the word "constable" for the word "sheriff."

May appear
in person or
by attorney.

SEC. 476. Parties in justices' courts may prosecute or defend in person or by attorney; and any person, on the request of a party, may act as his attorney, except that the constable by whom the summons or jury process was served shall not appear or act on the trial in behalf of either party.

Not to be
held to
answer, out
of township
of residence,
except in
certain cases

SEC. 477. No person shall be held to answer to any summons issued against him from a justice's court in a civil action in any township or city, other than the one in which he shall reside, except in the cases following: First. When there shall be no justice's court for the township or city in which the defendant may reside, or no justice competent to act on the case. Second. When two or more persons shall be jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different townships or different cities of the same county, or in different counties, the plaintiff may prosecute his action in a justice's court of the township or city in which any of the debtors or other persons liable may reside. Third. In cases of injury to the person, or to real or personal property, the plaintiff may prosecute his action in the township or city where the injury was committed. Fourth. Where personal property unjustly taken or detained is claimed, or damages therefor are claimed, the plaintiff may bring his action in any township or city in which the property may be found, or in which the property was taken. Fifth. When the defendant is a non-resident of

the county, he may be sued in any township or city wherein he may be found. Sixth. When a person has contracted to perform any obligation at a particular place, and resides in another township or city, he may be sued in the township or city in which such obligation is to be performed, or in which he resides. Seventh. When the foreclosure of a mortgage, or the enforcement of a lien upon personal property, is sought by the action, the plaintiff may sue in the township or city where the property is situated.

SEC. 478. Judgment upon confession may be entered up in any justice's court in the [territory,] specified in the confession. Judgment by confess'n.

SEC. 479. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to their residences, or the place where the cause of action arose, or the subject-matter of the action may exist. Jurisdiction by consent of parties.

CHAPTER II.—*Summons, Arrest, Attachment, and Claim of Personal Property.*

SEC. 480. Actions in justices' courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument, upon which the action is brought, or a concise statement, in writing, of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleadings of the parties without summons. In the latter case, the action shall be deemed commenced at the time of appearance. Action, how commenced.

SEC. 481. When a guardian is necessary, he shall be appointed by the justice, as follows: First. If the infant be plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent, in writing, of the guardian to be appointed, and to be responsible for costs, if he fail in the action, shall be first filed with the justice. Second. If the infant be defendant, the guardian shall be appointed at the time the summons is returned, or before the pleadings. It shall be the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present, and consent, in writing, to be appointed. Otherwise, the justice may appoint any suitable person who gives such consent. Guardian, how appointed.

SEC. 482. The summons shall be addressed to the defendant by name, or, if his name be unknown, by a fictitious name; and shall summon him to appear before the justice, at his office, naming its township or city, and, at a time specified therein, to answer the complaint of the plaintiff, for a cause of action therein described in general terms, sufficient to apprise the defendant of the nature of the claim against him; and in action for money or damages, shall state the amount for which Summons, form of.

the plaintiff will take judgment if the defendant fail to appear and answer. It shall be subscribed by the justice before whom it is returnable.

Time of
service and
appearance.

SEC. 483. The time mentioned in the summons for the appearance of the defendant and time of service shall be as follows: First. When the summons is accompanied with an order to arrest the defendant, it shall be returnable immediately. Second. In all other cases it shall be returnable in not less than two or more than ten days from its date, and shall be served at least two days before the time for appearance; *provided*, when the defendant is a non-resident of the township or city where the action is brought, such defendant may appear at any time after service of summons, by giving one day's notice to the plaintiff or his attorney.

How served,

SEC. 484. The summons shall be served by the sheriff or a constable of the county, or any person of lawful age, as follows: First. If the action be against a corporation, by delivery of a copy to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof; or, when no such officer resides in the county, to a director resident therein. Second. If against a minor under the age of fourteen years, by delivery of a copy to such minor, and also to his father, mother, or guardian; or, if there be none within the county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is. Third. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by delivery of a copy to such guardian. Fourth. In all other cases, by delivery of a copy to the defendant personally.

Service by
publication.

SEC. 485. When the person upon whom the service is to be made, resides out of the territory, or has departed from the territory, or cannot, after due diligence, be found within the territory, or conceals himself to avoid the service of summons, and the fact shall appear by affidavit to the satisfaction of the justice, and it shall, in like manner, appear that a cause of action exists against the defendant in respect to whom the service is to be made, the justice shall grant an order that the service be made by the publication of the summons. The order shall direct the publication to be made in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; *provided*, that a publication against a defendant residing out of the territory, or absent therefrom, shall not be less than one month. The service of summons shall be deemed complete at the expiration of the time prescribed by the order of publication. The justice shall also direct a copy of the summons to be forthwith deposited in the post office, directed to the person to be served, at his or her last known place of residence.

SEC. 486. An order to arrest the defendant may be indorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases, arising after the passage of the act: First. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to start from the territory with intent to defraud his creditors, or where the action is for a willful injury to the person, or for taking, detaining or injuring personal property. Second. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use, by an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity. Third. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought. Fourth. When the defendant has removed, concealed or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action.

When order for arrest may be indorsed.

SEC. 487. Before an order for an arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment the plaintiff will pay to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

Same.

SEC. 488. The defendant, immediately upon being arrested, shall be taken to the office of the justice who made the order, and, if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of defendant that he is a material witness in the action, the officer shall immediately take the defendant before the next justice of the city or township within the county, who shall take cognizance of the action and proceed thereon as if the summons had been issued and the order of arrest made by him.

When defendant may be taken before another justice.

SEC. 489. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

Duty of officer making arrest.

SEC. 490. The officer making an arrest shall keep the defendant in custody until duly discharged by order of the justice.

Same.

SEC. 491. The defendant under arrest, on his appearance with the officer, may demand a trial immediately; and upon

Defendant
under arrest
may demand
immediate
trial or bail.

such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the time; or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff, beyond three hours, shall discharge the defendant from arrest, but the action may proceed notwithstanding, and the defendant shall be subject to arrest on the execution, in the same manner as if he had not been so discharged.

How de-
fendant may
obtain ad-
journment.

SEC. 492. If the defendant, on his appearance, demand an adjournment, the same shall be granted, on condition that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing the undertaking specified in this section, the justice shall order the defendant to be discharged from custody.

Attachment,
when may
be issued.

SEC. 493. A writ to attach the property of the defendant shall be issued by the justice, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in section five hundred and twenty-one.

Prerequisite
to issuance.

SEC. 494. Before issuing the writ the justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment.

Writ of,
form.

SEC. 495. The writ may be directed to the sheriff, or any constable of the county, and shall require him to attach and safely keep all the property of the defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking of two sufficient sureties in an amount sufficient to satisfy such demand, besides costs; in which case, to take such undertaking.

Previous pro-
visions made
applicable.

SEC. 496. The sections of this act, from section one hundred and twenty-four to section one hundred and forty-one, both inclusive, shall be applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff," whenever the writ is directed to a constable, and the word "justice" being substituted for the word "judge."

Plaintiff
may claim

SEC. 497. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing the sum-

mons, or at any time before answer, claim the delivery of such property to him, as provided in this chapter [of this act]. delivery of property.

SEC. 498. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: Delivery, how claimed
First. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second. That the property is wrongfully detained by the defendant. Third. The alleged cause of the detention thereof, according to his best knowledge, information and belief. Fourth. That the same has not been taken for a tax, assessment, or fine, pursuant to statute; or seized under an execution, or an attachment against the property of the plaintiff; or, if seized, that it is by statute exempt from such seizure; and, Fifth. The actual value of the property.

SEC. 499. The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff or a constable of the county to take the same from the defendant, and deliver it to the plaintiff, upon receiving the undertaking mentioned in the following section. Order for.

SEC. 500. Upon the receipt of the affidavit and order, with a written undertaking executed by two or more sufficient sureties, approved by the officer, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the officer shall forthwith take the property described in the affidavit, if it be in the possession of the defendant, or his agent, and retain it in his custody. He shall, also, without delay, serve on the defendant a copy of the affidavit, order and undertaking, by delivering the same to him personally, if he can be found within the county, or to his agent, from whose possession the property is taken, or if neither can be found within the county, by leaving them at the usual place of abode of either within the county, with some person of suitable age and discretion, or, if neither have any known place of abode within the county, by putting them into the nearest post office directed to the defendant. Duty of officer in the premises

SEC. 501. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the officer that he excepts to the sufficiency of the sureties. Excepting to sureties.
If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

SEC. 502. At any time before the delivery of the property

How defendant may reclaim property.

to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound, in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within two days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter [of this act].

Justification of sureties of defendant.

SEC. 503. The defendant's sureties, upon reasonable notice to the plaintiff, shall justify before the justice; and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff. If the property, or any part thereof, be concealed in a building or inclosure, the officer shall publicly demand its delivery; and if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession.

Duty of officers as to concealed property.

Disposition of property by officer.

SEC. 504. When the officer shall have taken property, as in this chapter [of this act] provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

Proceedings in case property is claimed by third party.

SEC. 505. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit to his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim, by an undertaking, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders of the county; and no claim to such property by any other person than the defendant, or his agent, shall be valid against the officer, unless so made.

Return of order.

SEC. 506. The officer shall return the order and affidavit, with his proceedings thereon, to the justice, within five days after taking the property mentioned therein.

Qualification of sureties.

SEC. 507. The qualification of sureties on the several undertakings required by this chapter [of this act], shall be as

follows: First. Each of them shall be a resident and householder, or freeholder, within the county. Second. Each shall be worth double the amount stated in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

SEC. 508. For the purpose of justification, each of the sureties shall attend before the justice at the time mentioned in the notice, and may be examined on oath, on the part of the adverse party, touching his sufficiency, in such manner as the justice, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the sureties, if required.

Justification
of sureties,
how con-
ducted.

SEC. 509. If the justice find the sureties sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and file the same, and the officer shall thereupon be exonerated from liability.

Sureties suf-
ficient, pro-
ceedings of
justice.

CHAPTER III.—*Pleadings and Trial.*

SEC. 510. The pleadings in justices' courts shall be—First. The complaint by the plaintiff, stating the cause of action. Second. The answer by the defendant, stating the ground of the defense.

Pleadings
defined.

SEC. 511. The pleadings shall be in writing, and verified by the oath of the party, his agent or attorney, when the action is—First. For the foreclosure of any mortgage, or the enforcement of any lien, on personal property. Second. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions. Third. To recover possession of a "mining claim." In other cases, the pleadings may be oral or in writing.

When to be
in writing
and verified.

SEC. 512. When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office, and a reference to them made in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

Oral, to be
entered;
written, to
be filed.

SEC. 513. The complaint shall state, in a plain and direct manner, the facts constituting the cause of action.

Complaint,
what to state.

SEC. 514. The answer may contain a denial of any of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense, or a counter claim, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

Answer,
what to
contain.

SEC. 515. A statement in an answer that party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party, to form a belief, shall be deemed equivalent to a denial.

Certain
statement in
equal to
denial.

SEC. 516. When the cause of action, or counter-claim, arises upon an account or instrument for the payment of money

When cause
arises instru-

ment for
payment of
money.

only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereupon, from the adverse party, a specified sum, which he claims to recover or set off. The court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished; or, if it be not so exhibited and a copy furnished, may prohibit its being afterwards given in evidence.

Instrument,
genuineness
of to be
admitted.

SEC. 517. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the same by his oath.

Objection to
pleadings.

SEC. 518. Either party may object to a pleading of his adversary, or to any part thereof, that is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

Variance be-
tween proof
and allega-
tion.

SEC. 519. A variance between the proof on the trial and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

Amendment
of pleadings.

SEC. 520. The pleadings may be amended at any time before the trial, to supply a deficiency or omission, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars; but such payment shall not be required unless an adjournment is made necessary by the amendment; nor shall an amendment be allowed after a witness is sworn on the trial, when an adjournment thereby will be made necessary.

Title of real
property not
to be raised.

SEC. 521. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised on the trial before a justice, and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the decision of a question of title to real property, the justice shall suspend all further proceedings in the action, and certify the pleadings; or if the pleadings be oral, a transcript of the

same from his docket to the district court of the county; and from the time of filing such pleadings or transcript with the county clerk, the district court shall have over the action the same jurisdiction as if it were originally commenced therein; *provided*, that when the pleadings or transcript are certified to the district court upon the answer of the defendant, he shall file an undertaking with two or more sufficient sureties, to be approved by the justice, to the effect that they will pay all costs of the action if it be decided against him by the district court.

Proceedings,
when in
question.

SEC. 522. If at any time before the trial it appear, to the satisfaction of the justice before whom the action is brought, by affidavit of either party, that such justice is a material witness for either party, or if either party make affidavit that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before such justice, by reason of the interest, prejudice, or bias of the justice, the action shall be transferred to some other justice of the same or neighboring township; and in case a jury be demanded, and affidavit of either party is made, that he cannot have a fair and impartial trial, on account of the bias or prejudice of the citizens of the township against him, the action shall be transferred to some other justice of the peace in the county. The justice to whom an action may be transferred by the provisions of this section, shall have and exercise the same jurisdiction over the action as if it had originally commenced before him. The justice ordering the transfer of the action to another justice, shall immediately transmit to the latter, on payment of costs, all the papers in the action, together with a certified transcript from his docket, of the proceedings therein. Upon the return-day of the summons, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party, as follows: First. When a party, who is not a resident of the county, is in attendance, the adjournment not to exceed twenty-four hours; when the defendant in attendance is under arrest, the adjournment not to exceed three hours. Second. In other cases not to exceed five days.

When action
to be trans-
ferred.

How trans-
ferred.

Adjournm't
of trial.

SEC. 523. The trial may be adjourned by consent, or upon application of either party, without the consent of the other, for a period not exceeding ten days (except as provided in the next section), as follows: First. The party asking the adjournment shall, if required by his adversary, prove, by his own oath, or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and shall show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so. Second. The party asking the adjournment shall, also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in

Same.

attendance, be then taken by deposition before the justice, which shall accordingly be done, and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections as if the witness were produced; but such objections shall be made at the time of taking the deposition. Third. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it is to be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

Same.

SEC. 524. An adjournment may be had, either at the time of joining issue, or at any subsequent time to which the case may stand adjourned, on application of either party, for a period longer than ten days, but not to exceed four months, from the time of the return of the summons, upon proof, by the oath of the party, or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced; that he has used due diligence to procure the evidence, and has been unable to do so, and that he expects to procure the evidence at the time stated by him; *provided*, that if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered, or overruled as improper, the adjournment shall not be had.

Same.

SEC. 525. No adjournment shall be granted for a period longer than ten days, upon the application of either party, except on condition that such party file an undertaking, with sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying.

Plaintiff not appearing, action dismissed.

Party not appearing, case may proceed.

SEC. 526. If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may nevertheless proceed, at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs.

Trial by jury, when demanded.

Proceedings when jury

SEC. 527. A trial by jury shall be demanded at the time of joining issue; and shall be deemed waived, if neither party then demand it. When demanded, the trial of the case shall be adjourned, until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the justice, and shall be on the same day, or within the next two days. The jury shall be

summoned upon an order of the justice, from the citizens of the city or township, and not from the bystanders.

trial demanded.

SEC. 528. At the time appointed for the trial, the justice shall proceed to call, from the jurors summoned, the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number, not more than twelve, nor less than three.

Same.

SEC. 529. If a sufficient number of competent and indifferent jurors do not attend, the justice shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury.

Same.

SEC. 530. Either party may challenge the jurors. The challenges shall be either peremptory or for a cause. Each party shall be entitled to three peremptory challenges. Either party may challenge for cause, on any grounds set forth in section number one hundred and sixty-two. Challenges for cause shall be tried by the justice in a summary manner, who may examine the juror challenged and witnesses.

Challenging jurors.

CHAPTER IV.—*Judgment and Execution.*

SEC. 531. Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases: First. When the plaintiff voluntarily dismisses the action before it is finally submitted. Second. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter. Third. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county, or township, or city; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

Judgment of dismissal without prejudice, in what cases entered.

SEC. 532. When the defendant fails to appear and answer, judgment shall be given for the plaintiff, as follows: When a copy of the account, note, bill or other obligation upon which the action is brought, was filed with the justice at the time the summons was issued, judgment shall be given without further evidence, for the sum specified in the summons.

Judgment by default.

SEC. 533. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of fact and of law, and render judgment accordingly.

Proceeding when jury trial not demanded.

SEC. 534. Upon a verdict the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases it shall be entered within four days after the close of the trial. If the action be on contract against two or more defendants, and the summons is served on one or more, but not on all, the judgment shall be entered up only against those who were served, if the contract be a several, or a joint

Judgment, how and when entered

and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all, and the separate property of the defendants served.

Proceedings
when amon't
due exceeds
jurisdiction
of justice.

SEC. 535. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Effect of
defendant
offering to
allow judg-
ment for
specified sum

SEC. 536. If the defendant, at any time before the trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery otherwise than as to costs, as above provided.

Judgment
where de-
fendant is
subject to
arrest.

SEC. 537. When a judgment is rendered in a certain case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment, and entered in the docket.

Costs to be
included in
judgment.

SEC. 538. When the prevailing party is entitled to costs by this chapter [of this act], the justice shall add their amount to the verdict; or, in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of the defendant for the amount of such costs.

How execu-
tion may
issue to
sheriffs on
judgment of
justice.

SEC. 539. The justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the clerk of the county where the judgment was rendered. The time of the receipt of the transcript by the county clerk shall be noted by him thereon and entered in the docket; and from that time executions may be issued by the county clerk on such judgments to the sheriff of any other county of the territory, in the same manner as upon judgments recovered in the higher courts.

Process on
judgment,
how issued.

All process upon judgments recovered in justices' courts to be executed within the same county, shall be issued by the justice or his successor in office. No judgment rendered by a justice, of the peace shall create any lien upon any lands of the defendant, unless a transcript of such judgment certified by the justice, be filed and recorded in the office of the recorder. When such transcript is to be filed in any other county than that in which the justice resides, such transcript shall be accompanied with the certificate of the county clerk, as to the official character of the justice. When so filed and recorded in the office of the recorder for any county, such judgment shall constitute a lien upon, and bind the lands and tenements of the judgment debtor situated in the county where such transcript may be filed and

Lien of
judgment.

recorded, in favor of such judgment creditor, as if such judgment had been rendered in the district court of such county.

SEC. 540. Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, at any time within five years from the entry of the judgment. Execution

SEC. 541. The execution, when issued by a justice, shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and shall bear date the day of its delivery to the officer to be executed. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county, and the township or city, where, and the time when, it was rendered; the amount of judgment, if it be for money; and if less than the whole is due, the true amount due thereon. It shall contain, in like cases, similar directions to the sheriff or constable, as are required by the provisions of title seven of this act, in an execution to the sheriff. Form of.

SEC. 542. The sheriff or constable to whom the execution is directed, shall proceed to execute the same in the same manner as the sheriff is required by the provisions of title seven of this act, to proceed upon executions directed to him; and the constable, when the execution is directed to him, shall be vested for that purpose with all the powers of the sheriff, and, after issuing an execution, and either before or after its return (if the same be returned unsatisfied either in whole or in part), the judgment creditor shall be entitled to an order from the justice requiring the judgment debtor to attend at a time to be designated in the order, and answer concerning his property before such justice, and the attendance of such debtor may be enforced by the justice; on his attendance, such debtor may be examined under oath concerning his property, and any person alleged to have in his hands property, moneys, effects or credits of the judgment debtor, may also be required to attend and be examined, and the justice may order any property in the hands of the judgment debtor, or any other person, not exempt from execution, belonging to such debtor, to be applied towards the satisfaction of the judgment; and the justice may enforce such order by imprisonment until complied with; but no judgment debtor, or other person, shall be required to attend before the justice out of the county in which he resides. How
executed.

Examinat'n
of debtor
on oath.

Of debtor.

CHAPTER V.—*General Provisions.*

SEC. 543. Those provisions of this act which are referred to in this title, and no other, shall, in addition to the provisions embraced in this title, be applicable to justices' courts and proceedings therein. Applicable
to justices'
courts.

SEC. 544. Every justice shall keep a book, denominated a docket, in which he shall enter—First. The title of every action Docket, how
to be kept.

or proceeding. Second. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand. Third. The date of the summons and the time of its return, and, if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts. Fourth. The time when the parties, or either of them, appear, or their non-appearance if default be made; a minute of the pleadings and motions, if in writing, referring to them—if not in writing, a concise statement of the material parts of the pleading, and of all motions made during the trial by either party, and his decisions thereon. Fifth. Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time. Sixth. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and return of the jury. Seventh. The names of the jury, who appear and are sworn, the names of all witnesses sworn, and at whose request. Eighth. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge. Ninth. The judgment of the court, specifying the costs included, and the time when rendered. Tenth. The issuing of the execution, when issued, and to whom, the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and when, and by whom. Eleventh. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

Same,
entries to be
evidence.

SEC. 545. The several particulars of the last section specified shall be entered, under the title of the action to which they relate, and at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice, or his successor in office, shall be primary evidence to prove the facts so stated therein.

Index to.

SEC. 546. A justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family names.

To be depos-
ited with
successor.

SEC. 547. It shall be the duty of every justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to be kept as public records. If the office of a justice become vacant by his death, or removal from the township or city, or otherwise, before his successor is elected and qualified, the dockets in possession of such justice shall be deposited with the county clerk of the county, to be by him delivered to the successor in office of the justice.

During va-
cancy to be
deposited
with county
clerk.

Any justice
may issue
executions.

SEC. 548. Any justice with whom the docket of his predecessor is deposited, may issue execution or other process upon a judgment there entered and unsatisfied, in the same manner, and with the same effect, as the justice by whom the judgment

was entered might have done. In case of the creation of a new county, or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such, within the same territory, may come, shall, for the purposes of this section, be considered the successor of said former justice.

Creation of
new counties
or change of
boundaries.

SEC. 549. The justice elected to fill a vacancy shall be deemed the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same township, or city, from that time shall be deemed the successor.

Who deemed
successor.

SEC. 550. When two or more justices are equally entitled under the last section to be deemed the successors in office of a justice, the probate judge shall, by a certificate subscribed by him, and filed in the office of the county clerk, designate which justice shall be deemed the successor of a justice going out of office, or whose office has become vacant.

Same.

SEC. 551. The summons, execution, and every other paper made or issued by a justice, except a subpoena, shall be filled up without a blank left to be filled by another, otherwise it shall be void.

Papers, how
filled up.

SEC. 552. In case of the sickness, other disability, or necessary absence of a justice on a return of a summons, or at the time appointed for a trial, another justice of the same township or city may, at his request, attend in his behalf, and shall thereupon become vested with the power, for the time being, of the justice before whom the summons was returnable. In that case, the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the justice before whom the summons was returnable.

Sickness of
justice.

SEC. 553. A justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution, with or without an order to arrest the defendant, or with or without a writ of attachment. Said justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing on the process.

Special depu-
tation to
serve papers.

SEC. 554. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process, and shall be subject to the same obligations.

Authority of
deputation.

SEC. 555. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he still continued in office, and his sureties shall be liable to the same extent.

Constable,
when to
complete
execution
of process.

SEC. 556. A justice may punish as for a contempt, persons guilty of the following acts, and no others: First. Disorderly, contemptuous, or insolent behavior towards the justice while

Contempt,
what acts to
constitute.

holding the court, tending to interrupt the due course of a trial or other judicial proceeding. Second. A breach of the peace, boisterous conduct, or violent disturbance, in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding. Third. Disobedience or resistance to the execution of a lawful order or process made or issued by him. Fourth. Disobedience to a subpoena duly served, or refusing to be sworn or answer as a witness. Fifth. Rescuing any person or property, in the custody of any officer by virtue of an order or process of the court held by him.

When and
how pun-
ished sum-
marily.

Not in view
of court.

Punishment
of.

Conviction
for, how
entered.

Subpenas.

Commission-
ers to take
depositions.

Mining
claims in ac-
tion, what
evidence
admissible.

New trial,
for what
causes
granted.

SEC. 557. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense, or excuse, shall be given. The justice may thereupon discharge him, or may convict him of the offense. A justice may punish for contempts by fine or imprisonment, or both, such fine not to exceed in any case one hundred dollars, and such imprisonment one day.

SEC. 558. The conviction, specifying particularly the offense and the judgment thereon, shall be entered by the justice in his docket.

SEC. 559. Justices of the peace may issue subpoenas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county.

SEC. 560. Justices of the peace may issue commissions to take the depositions of witnesses out of this territory, and settle interrogatories to be annexed thereto, and direct the manner in which the commissions shall be returned. The provisions of title eleventh of this act, so far as the same are consistent with the jurisdiction and powers of justices' courts, shall be applicable to justices' courts, and to actions and proceedings therein.

SEC. 561. In actions respecting mining claims, proof shall be admitted of the customs, usages, or regulations, established and in force in the mining district embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this territory, shall govern the decision of the action in regard to all questions of location, possession, and abandonment.

SEC. 562. A new trial may be granted by the justice on motion, within ten days after the entry of judgment, for any one of the following causes: First. Accident or surprise, which

ordinary prudence could not have guarded against. Second. Excessive damages, appearing to have been given under the influence of passion; or, Third. Insufficiency of the evidence to justify the verdict or other decision. Fourth. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the time.

SEC. 563. The application shall be made upon affidavit and notice. The affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

Application
for, how
granted.

SEC. 564. Any party dissatisfied with a judgment rendered in a justice's court, may appeal therefrom to the probate court of the county, at any time within thirty days after the rendition of the judgment. The appeal shall be taken by filing a notice of appeal with the justice, and serving a copy on the adverse party. The notice shall state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

Appeal, how
taken.

SEC. 565. When a party appeals to the probate court on questions of law alone, he shall, within ten days from the rendition of judgment, prepare a statement of the case and file the same with the justice. The statement shall contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments; the proposed statement and amendments shall be settled by the justice, and if no amendments be filed, the original statement shall be adopted. The statement thus adopted, or as settled by the justice, with a copy of the docket of the justice, and all motions filed with him by the parties during the trial, and the notice of appeal, shall be used on the hearing of the appeal before the probate court.

Statement
of party
appealing.

SEC. 566. When a party appeals to the probate court, on questions of fact, or on questions of both law and fact, no statement need be made, but the action shall be tried anew in the probate court.

When action
tried anew.

SEC. 567. Upon receiving the notice of appeal, and on payment of the fees of the justice, and filing an undertaking as required in the next section, the justice shall, within five days, transmit to the clerk of the probate court, if the appeal be on question of law alone, a certified copy of his docket, the statement as admitted, or as settled, the notice of appeal, and the undertaking filed; or if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the

Certified
copy of
docket to be
transmitted.

notice of appeal, and the undertaking filed; and the justice may be compelled by the probate court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same; a certified copy of such order may be served on the justice by the party, or his attorney. In the probate court either party shall have the benefit of all legal objections made in the justice's court.

How made
effectual.

Undertaking
and justifica-
tion of
sureties.

SEC. 568. An appeal from a justice's court shall not be effectual for any purpose, unless an undertaking be filed with two or more sureties in the sum of one hundred dollars for the payment of the costs on the appeal; or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property; and shall be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgments and all costs that may be recovered against him in said action in the probate court; where the action is for the recovery of specific personal property, the undertaking shall be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the county court, and will obey any order made by the court therein. The undertaking shall be accompanied by the affidavit of the sureties that they are residents of the county, and are each worth the amount specified in the undertaking over and above all their just debts and liabilities, exclusive of property exempt from execution, or the bond shall be executed by a sufficient number of sureties, who can justify in the aggregate to an amount equal to double the amount specified in the bond; or a deposit of the amount of the judgment, including all costs appealed from, or of the value of the property, including all costs in actions for the recovery of specific personal property, with the justice; and such deposit shall be equivalent to the filing of the undertaking in this act mentioned, and in such cases the justice shall transmit the money to the clerk of the probate court, to be by him paid out upon the order of the court. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties, justified before the justice before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amount stated in their affidavits, the appeal shall be regarded as if no undertaking had been given.

Stay of
proceedings.

SEC. 569. If an execution be issued on the filing of the undertaking, staying all proceedings, the justice shall, by

order, direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property, or proceeds thereof, as may be necessary to pay the same.

SEC. 570. Costs shall be allowed to the prevailing party in a justice's court. Costs allow'd to party prevailing.

SEC. 571. Justices of the peace shall receive from the sheriff or constables of their county, all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in their official capacity, and shall pay the same over to the parties entitled or authorized to receive them without delay. For a violation of this section, they may be removed from their office, and shall be deemed guilty of a misdemeanor. Justice, duty of in paying over money. Penalty for failure.

SEC. 572. Justices of the peace may, in all cases, require a deposit of money, or an undertaking, as security for costs of court, before issuing a summons. Security for costs.

SEC. 573. The provisions of sections thirty-two, three hundred and seventeen, three hundred and eighteen, three hundred and nineteen, three hundred and twenty, three hundred and twenty-one, three hundred and twenty-two, four hundred and sixty-two, four hundred and sixty-three, four hundred and sixty-six, four hundred and sixty-eight, four hundred and sixty-nine, four hundred and seventy, four hundred and seventy-four, shall be applicable to justices' courts and actions therein. Justices' courts, certain provisions applicable to.

TITLE XVII.

MISCELLANEOUS PROVISIONS.

SEC. 574. The supreme court may make rules not inconsistent with the constitution and laws of the territory, for its own government, and the government of the district courts; but such rules shall not be in force until thirty days after their adoption and publication. Rules of court, how made.

SEC. 575. If an action be brought against a sheriff for an act done by virtue of his office, and he give written notice thereon to his sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties; and the court or judge in vacation may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs. Action against sheriff, etc.

SEC. 576. Words used in this act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; writing shall be deemed to include printing or printed paper; oath to include affirma- Terms explained.

tion or declaration; signature or subscription, to include mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

Sureties,
how to
justify.

SEC. 577. In all cases where an undertaking with sureties is required by the provisions of this act, the judge, justice, clerk, or other officer taking the same, shall require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; *provided*, that when the amount specified in the undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Writs of
certiorari,
etc., by
whom issued.

SEC. 578. Writs of *certiorari* and *mandamus* may be issued in the cases prescribed by this act, by a judge of the supreme court, district court, or probate court, in vacations, and may, in the discretion of the judge issuing the writ, be made returnable, and a hearing may be had on the return thereof in the vacation.

Sale of prop-
erty under
writ of at-
tachment.

SEC. 579. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, or a probate judge, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party, or his attorney, in case such party has been personally served with a summons in the action.

Certified
copies of
papers to be
evidence.

SEC. 580. A copy of any record, document, or paper in the custody of a public officer of this territory, or of the United States, within this territory, certified under the official seal, or verified by the oath of such officer, to be a true, full and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this territory, in the like manner and with the like effect as the original could be if produced.

Copartners,
when sum-
moned in
firm's name.

SEC. 581. When two or more persons associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be used by such common name, the summons in such cases being served on one or more of the associates, but the judgment in such cases shall bind only the joint property of the associates.

Decisions on
appeal to be

SEC. 582. All decisions given upon an appeal, in any appellate court in this territory, shall be given in writing, with the

reason therefor, and filed with the clerk of the court, but this section shall not apply to actions tried with a jury anew in the probate court, or an appeal from a justice's court.

in writing,
etc.

SEC. 583. A defendant against whom an action is pending upon a contract, or for specific personal property, may at any time before answer upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon the same contract, or for the same property, upon due notice to such person, and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property or its value to such person as the court may direct, and the court may in its discretion make the order.

Substitution
of real party
defendant.

SEC. 584. Any person shall be entitled to intervene in an action who has an interest in the matter in litigation, in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complainant, or by uniting with the defendant in resisting the claims of the plaintiffs, or by demanding anything adversely to both the plaintiff and the defendant.

Intervention
when allow'd

SEC. 585. Any third person may intervene either before or after issue has been joined in the cause.

Who may
intervene.

SEC. 586. The intervention shall be by petition or complaint filed in the court in which the action is pending, and it must set forth the grounds on which the intervention rests. A copy of the petition or complaint shall be served upon the party or parties to the action against whom anything is demanded, who shall answer it as if it were an original complaint in the action.

How and
what to set
forth.

SEC. 587. The court shall determine upon the intervention at the same time that the action is decided; if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention.

Court to
determine.

SEC. 588. On the trial of any action in the court of record at the request of either party, the court may appoint a competent person to take down the testimony in writing.

Testimony
to be in
writing.

SEC. 589. The party obtaining the postponement of a trial in any court of record, shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a judge or clerk of the court in which the case is pending, or before such notary public as the court may indicate, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witness were produced.

When taken
during post-
ponement of
trial.

SEC. 590. Whenever costs are awarded to a party by an appellate court, such party may have an execution for the

Execution
for costs.

same, on filing a *remittitur* with the clerk of the court below, and it shall be the duty of such clerk, whenever the *remittitur* is filed, to issue the execution upon application therefor; and whenever costs are awarded to a party by an order of any court, such party may have an execution therefor in like manner as upon a judgment.

CONCERNING COURTS OF JUSTICE OF THIS TERRITORY, AND
JUDICIAL OFFICERS.

Designation
of different
courts.

SEC. 591. The following shall be the courts of justice of this territory: First. The supreme court. Second. The district courts. Third. The probate courts. Fourth. The justices' courts. Fifth. The recorders' courts.

SUPREME COURT.

Jurisdiction.

SEC. 592. The supreme court shall have appellate jurisdiction in all civil cases where the amount in dispute exceeds in value one hundred dollars, and in all criminal cases tried in district courts, and shall hold its sessions at the capital at such times as shall be fixed by law.—[See Chapter lxxxiii, p. 289.

DISTRICT COURTS.

Number of
judicial
districts.

SEC. 593. The territory shall be divided into three judicial districts.

Judges for.

SEC. 594. There shall be a district judge for each of the judicial districts. The courts held by them shall be the district courts of the territory.

Jurisdiction.

SEC. 595. The jurisdiction of these courts shall be of two kinds—First. Original. Second. Appellate.

Original.

SEC. 596. The district court shall have original jurisdiction in civil cases where the amount in dispute exceeds one hundred dollars, exclusive of interest, and in all criminal cases not otherwise provided for.

Appellate.

SEC. 597. The appellate jurisdiction of these courts, shall extend to hearing upon appeal—First. An order or judgment of a probate court, in the cases prescribed by statute. Second. In appeals in divorce cases.

SEC. 598. The courts, and the judges thereof, shall have power to issue all writs necessary or proper to the complete exercise of the power conferred upon them by the constitution, and organic act.

Terms,
where held.

SEC. 599. The terms shall be held at such times and places as provided by law; if a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to provide such room, attendants, fuel, lights, and stationery, and the expenses shall be a county charge.—[See Chapter lxxxiii, p. 289.

SEC. 600. The terms shall be held until the business of the

term is fully disposed of, or until the day fixed for the commencement of some other term in the district, [or] the time fixed by law for a term of the supreme courts, and may be adjourned from time to time in the discretion of the court.

Length of term.

Adjournm't.

SEC. 601. The district judges shall, at all reasonable times, when not engaged in holding courts, transact such business at their chambers, as may be done out of court, at chambers; they may try and determine writs of *mandamus*, *certiorari*, and *quo warranto*, hear and dispose of all applications for orders and writs which are usually granted in the first instance upon an *ex parte* application, and may, in their discretion, also hear applications to discharge such orders and writs.

Chambers, business which may be done at.

SEC. 602. Whenever an action or proceeding is commenced in a district court, in which a probate court has concurrent jurisdiction, the district court may, if the parties consent, by order, transfer the same to the probate court of the same county; upon such transference, the probate court shall have and exercise over such action or proceeding, the same jurisdiction as if originally commenced therein.

Transfer of action to probate court.

SEC. 603. A district judge may hold a term in any judicial district in this territory, upon the request of the judge of the district in which such term is to be held; and when, by reason of sickness or absence from the territory, or from any other cause, a term cannot be held in a district by the judge thereof, a certificate of that fact shall be transmitted by the clerk to the governor, who shall thereupon direct some other district judge to hold such term. It shall be the duty of the judge thus directed to hold such term.

Judges may alternate.

When governor may direct other judge to hold term.

SEC. 604. Each district court shall have power to make rules, not inconsistent with the constitution and laws of this territory, for its own government and the government of its officers, but such rules shall not be in force until thirty days after their adoption and publication, and no rule shall be made imposing any tax or charge upon any legal proceeding, or making an allowance to any officer for services.

Rules of court.

THE PROBATE COURT.

SEC. 605. There shall be in each county a probate court, with the jurisdiction conferred by this chapter.

One in each county.

SEC. 606. The probate court shall have power to open and receive the proof of last wills and testaments, and to admit them to probate; to grant letters testamentary, of administration, and of guardianship, and to revoke the same, for cause shown, according to law; to compel executors, administrators and guardians, to render an account when required, or at the period fixed by law; to order the sale of property of estates, or belonging to minors; to order the payment of debts due by estates; to order and regulate all partitions of property or estate of deceased persons; to compel the attendance of witnesses; to appoint appraisers or arbitrators; to compel the production

Powers and jurisdiction.

of title deeds, papers, or other property of an estate, or of a minor; and to make such other orders, as may be necessary and proper, in the exercise of the jurisdiction conferred upon the probate court.

Same.

SEC. 607. The probate judge shall have power in vacation to appoint appraisers, to receive inventories and accounts to be filed in his court; to suspend the powers of executors, administrators, or guardians in the cases allowed by law; to grant special letters of administration or guardianship; to approve claims and bonds, and to direct the issuance from this court of all writs and process necessary in the exercise of his powers as probate judge.

Same.

SEC. 608. The probate court shall have jurisdiction to hear and determine all causes appealed from justices' courts. The probate court shall have original civil jurisdiction—First. Of an action to enforce the lien of mechanics and others. Second. Of proceedings in cases of insolvency. Third. Of proceedings in divorce cases. The probate court, and the judge thereof, shall have power at chambers, to try and determine suits of *mandamus*, *certiorari* and *quo warranto*, and to issue all writs necessary or proper to the complete exercise of the powers conferred upon it by this and other statutes. If a room for holding the court be not provided by the county, together with attendants, fuel, lights and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to procure such room, attendants, fuel, lights and stationery, and the expenses thereof shall be a county charge.

JUSTICES' COURTS.

Jurisdiction.

SEC. 609. The courts held by justices of the peace in this territory, shall be denominated justices' courts, and shall have the jurisdiction conferred by this chapter [of this act], but nothing contained in this chapter [of this act] shall affect their jurisdiction in actions or proceedings now pending therein, nor shall it affect any judgment or order already made, or proceedings already taken.

Same.

SEC. 610. Justices' courts shall have jurisdiction of the following actions and proceedings: First. Of an action arising on contracts for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed one hundred dollars. Second. Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring real or personal property, if the damages claimed do not exceed one hundred dollars. Third. Of an action for a fine, penalty or forfeiture, not exceeding one hundred dollars, given by statute, or the ordinance of an incorporated city. Fourth. Of an action upon a bond conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due; when the payments are to be made by installments, an action may

be brought for each installment as it becomes due. Fifth. Of an action upon a surety bond or undertaking taken by them, though the penalty exceed, if the amount claimed does not exceed, one hundred dollars. Sixth. Of an action for the foreclosure of any mortgage, or the enforcement of any lien on real or personal property, when the debt secured does not exceed, exclusive of interest, one hundred dollars. Seventh. Of an action to recover the possession of personal property, when the value of such property does not exceed one hundred dollars. Eighth. To take and enter judgment on the confession of a defendant when the amount confessed does not exceed one hundred dollars. Ninth. Of an action for a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possession. Tenth. Of an action to determine the right to a mining claim, and for damages for injury to the same, when the damages claimed do not exceed one hundred dollars. Eleventh. Of proceedings respecting vagrants and disorderly persons.

SEC. 611. The jurisdiction conferred by the last section shall not extend, however, to a civil action in which the title to real property shall come in question.

SEC. 612. These courts shall also have jurisdiction of the following public offenses, committed within the respective counties in which such courts are established: First. Petit larceny. Second. Assault and battery, not charged to have been committed upon a public officer in the discharge of his duties, or with intent to kill. Third. Breaches of the peace, riots, affrays, committing a willful injury to property, and all misdemeanors, punishable by fine, not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

SEC. 613. There shall be no terms in justices' courts; these courts shall always be open.

SEC. 614. Whenever a vacancy shall occur in the office of a justice, by death, resignation, or otherwise, a special election may be ordered by the probate judge to supply such vacancy. The justice elected to supply a vacancy shall hold his office only for the unexpired term of his immediate predecessor. Each justice, before entering upon the discharge of his duties, shall take the constitutional oath of office, and shall execute a bond to the state in the sum of five thousand dollars, conditioned for the faithful performance of his duties, and file the same with the county clerk.

GENERAL PROVISIONS RESPECTING THE COURTS OF JUSTICE AND JUDICIAL OFFICERS.

SEC. 615. The supreme court, the several district courts, and the several probate courts of this territory, shall be courts of record.

Sittings of
court to be
public.

SEC. 616. The sittings of every court of justice shall be public, except as is provided in the next section.

Divorce trial
may be
private.

SEC. 617. In an action for divorce, the court may direct the trial of any issue of fact joined therein to be private, and upon such directions, all persons may be excluded, except the officers of the court, the parties, their witnesses and counsel.

Powers of
courts.

SEC. 618. Every court shall have power—First. To preserve and enforce order in its immediate presence. Second. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority. Third. To compel obedience to its lawful judgments, orders, and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein. Fourth. To control, in furtherance of justice, the conduct of its ministerial officers.

PARTICULAR DISQUALIFICATION OF JUDGES.

Judge, when
disqualified
from acting.

SEC. 619. A judge shall not act as such in any of the following cases: First. In an action or proceeding to which he is a party, or in which he is interested. Second. When he is related to either party by consanguinity, or affinity, within the third degree. Third. When he has been attorney or counsel for either party in the action or proceeding; but this section shall not apply to the arrangement of the calendar, or the regulation of the order of business.

When for-
bidden to act
as attorney.

SEC. 620. A judge shall not act as attorney or counsel in a court in which he is judge, or in an action or proceeding removed therefrom to another court for review, or in any action or proceeding from which an appeal may lie in his own court.

Same.

SEC. 621. A judge of the supreme court, or of the district court, shall not act as attorney or counsel in any court, except in an action or proceeding to which he is a party on the record.

Judge to
have no
attorney
for partner.

SEC. 622. A judge or justice of the peace shall not have a partner acting as attorney or counsel in any court in this territory.

Not to absent
himself.

SEC. 623. A judge of the supreme court, or of the district court, or of a probate court, shall not absent himself from the territory.

JUDICIAL DAYS AND PLACES OF HOLDING COURTS.

Courts, on
what days to
be open.

SEC. 624. The courts of justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

Same.

SEC. 625. No court shall be opened, nor shall any judicial business be transacted on Sunday, on new year's day, on the fourth of July, on christmas day, on Washington's birth-day, on thanksgiving day, or on a day in which the general election is held, except for the following purposes: First. To give, upon their request, instructions to a jury then deliberating on their

verdict. Second. To receive a verdict, or discharge a jury. Third. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

SEC. 626. Every court of justice except a justice's, shall sit at the county-seat of the county in which it is held, except in cases provided in this article. Justices' courts shall be held in their respective townships or cities; *provided*, that no justice of the peace shall hold a court in any other township of said county or city, than the one for which he shall have been elected.

Where to
be held.

SEC. 627. If no judge attend on the day appointed for the holding the court, before noon, the sheriff or clerk shall adjourn the court until the next day at ten o'clock, and if no judge attend on that day before noon, the sheriff or clerk shall adjourn the court until the following day; and so on from day to day for one week. If no judge attend for one week, the sheriff or clerk shall adjourn the court for the term.

Judge not
attending, to
be adjourned

SEC. 628. A judge authorized to hold or preside at a court appointed to be held in a city or town, may, by an order filed with the county clerk, and published as he may prescribe, direct that the court be held or continued at any other place in the city or county than that appointed, when war, pestilence, or other public calamity, or the dangers thereof, or the destruction of the building appointed for holding the court, may render it necessary: and may, in the same manner, revoke the order, and in his discretion appoint another place in the same city or county for holding the court.

When and
how place of
holding may
be changed.

SEC. 629. When the court is held at a place appointed as provided in the last section, every person held to appear at the court, shall appear at the place so appointed.

Persons to
appear at
place
changed to.

SEALS OF THE COURTS OF JUSTICE.

SEC. 630. Each of the following courts, and no others, shall have a seal: First. The supreme court. Second. The district courts. Third. The probate courts.

What court
to have.

SEC. 631. The clerk of each court shall keep the seal thereof.

Who, to keep

SEC. 632. The seal of the court need not be affixed to any proceedings therein, except—First. To a summons or writ. Second. To the proof of a will, or the appointment of an executor, administrator or guardian. Third. To the authentication of a copy of a record, or other proceeding of the court, or an officer thereof, for the purpose of evidence in another court.

To what to
be affixed.

SEC. 633. The seal may be affixed by impressing it on the paper, or on a substance attached to the paper, and capable of receiving the impression.

How affixed.

MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

SEC. 634. If an application for an order, made to a judge of a court in which the action or proceeding is pending, be

Application
for order not

made to two
courts of like
jurisdiction. refused in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court; *provided*, that nothing in this section be so construed as to apply to motions refused for any informality in the papers or proceedings necessary to obtain an order.

Violation, a
contempt. SEC. 635. A violation of the last section may be punished as a contempt; and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of a court in which the action or proceeding is pending.

Powers of
judges to
take ac-
knowledgm't
of deeds. SEC. 636. The judges of the supreme court, of the district courts, and of the probate courts, shall have power in any part of the territory, and justices of the peace and recorders within their respective counties, shall have power to take and certify—
First. The proof and acknowledgment of a conveyance of real property, or of any other written instrument. Second. The acknowledgment of satisfaction of a judgment of any court. Third. An affidavit to be used in any court of justice of this territory.

Action not
affected by
vacancy. SEC. 637. No action or proceeding in a court of justice shall be affected by a vacancy in the office of all or any of the judges, or by the failure of a term thereof.

Proceedings,
language
to be con-
ducted in. SEC. 638. Every written proceeding in a court of justice in this territory, or before a judicial officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals, in the customary manner.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

Entry into
lands, how
made. SEC. 639. No person or persons shall hereafter make any entry into lands, tenements, or other possessions, but in cases where entry is given by law, and in such cases not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

Justice of
peace may
inquire into,
and have
restitution. SEC. 640. Any justice of the peace shall have authority to inquire, as hereinafter directed, as well against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who, having lawful and peaceful entry into lands, tenements, or other possessions, unlawfully detain the same; and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, and that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Proceedings
on complaint
to justice. SEC. 641. When any complaint shall be made in writing to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, com-

manding him to summon the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be less than ten days from the day of issuing such summons, and at the place therein mentioned.

SEC. 642. Such summons shall be served upon the person or persons against whom the same is issued, by delivering a certified copy thereof to such person or persons at least two days before the return-day thereof; and the officer serving the same shall make a special return of the time and manner of serving such summons. Same.

SEC. 643. After the return of the summons, served as herein before provided, and at the time and place appointed in said summons, the justice shall proceed to hear and determine said complaint, unless either party shall demand a jury; in which case, the justice shall issue a venire for a jury, in the same manner, and upon the same terms, as in other cases provided for trial by jury in justices' courts, and such jury shall be sworn as in other cases. Same.

SEC. 644. If, at the time of making such complaint, it shall be made to appear that the person or persons against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the justice before whom the same is made, to issue his summons, as herein before provided, and the same may be served by leaving a certified copy thereof at the last and usual place of abode of such person or persons, not less than two days before the return-day thereof, which copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same, and the officer shall make a special return of the time and manner of serving said summons, and the suit shall thereafter proceed, the same as though a personal service were had of such summons. Proceedings when defendant absent from county.

SEC. 645. The justice may, at his discretion, adjourn any trial under this act, not exceeding ten days; and when the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for want of some material witness, naming him, that he has made due exertion to obtain such witness, and believes, if an adjournment be allowed, he will be able to procure the attendance of such witness, or his deposition, in time to produce the same upon the trial, in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding three months. Adjournm't of trial, when to be made.

SEC. 646. The testimony of any witness, which may be considered necessary by either party, may be taken in the same Testimony, how taken.

manner, and with the like effect, as is provided for the taking of testimony in other cases in justices' courts.

What complain't required to show.

SEC. 647. On the trial, the complainant shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of a forcible entry, or was entitled to the possession of the premises at the time of a forcible holding over. The defendant may show in his defense that he, or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inquisition, and that his interest therein is not then ended or determined, and such showing shall be a bar to the prosecution, and in no case when the title of land is necessarily involved, shall a justice of the peace have cognizance.

What defendant may show in defense.

Proceedings on decision of case.

SEC. 648. If upon the trial of any complaint under this act, the justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations in the complaint, said justice shall thereupon enter judgment for the complainant to have restitution of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the cost for the complainant, and may issue execution therefor; and the said justice shall also award and issue a writ of restitution; but if the said justice or jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant, and issue execution therefor.

When jury cannot agree

SEC. 649. If the jury impaneled cannot agree upon a verdict, the justice may, with the consent of the parties, discharge them, and issue a venire returnable forthwith, or at some other time agreed upon by the parties.

Damages, rents, etc., on verdict for complainant.

SEC. 650. In all cases of a verdict by the justice or jury for the complainant, the damages shall be assessed as well for waste and injury committed upon the premises, as for the rents and profits during such detainer, and the verdict shall also find the monthly value of the rents and profits of the said premises; and the complainant shall be entitled to recover treble damages against the persons against whom judgment has been rendered, which damages shall be assessed by the justice or jury, and when so assessed shall be trebled by said justice, and entered as a judgment in the cause upon which execution may issue.

Proceedings against tenants holding over.

SEC. 651. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised, or let to him or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement under which he or she holds, or after any rent shall become due according to the terms of such lease or agreement, and shall remain unpaid for the space of three days, in all such cases, if the

lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant, that he or she shall deliver possession of the premises held as aforesaid, and if such tenant shall refuse or neglect, for the space of three days after such demand, to quit the possession of such lands or tenements, or to pay the rent thereof, due and unpaid as aforesaid, upon complaint therefor to any justice of the peace of the proper county, the justice shall proceed to hear, try, and determine the same, in the same manner as in other cases herein before provided for, but shall impose no fine upon any such case mentioned in this section.

SEC. 652. The preceding section shall not extend to any person who has, or shall have continued in possession one year after the termination of the time for which the premises were demised, or leased, or let to him or her, or those under whom he or she holds possession, or to any person who continues in possession three years, quietly and peaceably.

Preceding article not applicable to certain cases

SEC. 653. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or who, appearing, shall refuse to serve or give evidence in any prosecution instituted under this act, shall forfeit and pay for every such default, or refusal, to the use of the county, unless some reasonable cause be assigned, such fine, not exceeding twenty dollars, as the said justice shall think proper to impose, and execution may be issued therefor.

Penalty for not attending as a juror or witness.

SEC. 654. If either party shall feel aggrieved by the verdict of the jury, or decision of the justice, he may appeal within ten days, as in other cases tried before justices of the peace, and he shall give bond, with two or more sufficient sureties, to be approved by said justice, conditioned to pay all costs of such appeal, and abide the order the court may make therein, and pay all rent and other damages justly accruing during the pending of such appeal; and upon the filing of the notice of appeal, and the affidavit of the appellant that the appeal is taken in good faith, and that he intends to perfect said appeal, the justice shall grant a stay of the writ of restitution for not exceeding two days, for the purpose of allowing the appellant an opportunity to file his appeal bond, and for no other.

Appeal, when and how to be taken.

SEC. 655. Upon taking such appeal, all further proceedings in the case shall be thereby stayed, and the appellate court, in all cases which are now pending, or which may hereafter be brought, shall proceed to try the case anew, and shall issue all necessary writs and process to carry out the provisions of this act. All laws, or parts of laws, which require a statement of the case, or evidence, or exceptions, to be taken before a justice of the peace, on the trial of a case for forcible entry and unlawful detainer, in order to perfect an appeal, are hereby repealed, and the same shall be tried in the appellate court on the evidence introduced before said appellate court.

Appeal to stay proceedings and trial.

Statement of case not necessary.

SEC. 656. If a writ of restitution shall have been issued

Appeal to
stay proceed-
ings on writ
of restitution

previous to the taking of the appeal, the justice shall give the appellant a certificate of the allowance of such appeal; and upon the serving of such certificate upon the officer having such writ of restitution, said officer shall cease all further proceedings by virtue of such writ, and if such writ shall not have been completely executed, the parties in possession shall remain in possession of the premises until the appeal shall be determined.

Matter
of form
immaterial.

SEC. 657. In all cases of appeal under this act, the appellate court shall not dismiss or quash the proceedings for want of form, only provided the proceedings have been conducted substantially according to the provisions of this act.

Amendm'ts
to pleadings.

SEC. 658. Amendments to the complaint, answer or summons, in matters of form only, may be allowed by the court at any time before final judgment, upon such terms as may be just, and all matters of excuse, justification, or avoidance of the allegations in the complaint, may be given in evidence under the answer.

SEC. 659. The following, or equivalent forms, may be used in proceedings under this act, to wit:

SUMMONS.

Form of
summons.

The people of the United States, of the territory of Nevada, to the sheriff or any constable of the county aforesaid:

Whereas, A. B., of the county of ———, hath exhibited unto me, a justice of the peace for said county, a complaint against C. D., of the county of ———, for that the said C. D., of the county of ———, on the ——— day of ———, A. D. ———, at the county of ———, [here insert the substance of the complaint, with sufficient certainty]. You are therefore commanded to summon the said C. D., if he be found in your county, to be and appear before me at my office (or stating the place), on the — day of —, A. D. —, then and there to make answer unto the complaint aforesaid. Given under my hand and seal, this — day of —, A. D. —. E. F., justice of the peace.

SEC. 660.

WRIT OF RESTITUTION.

Form of writ
of restitution

The people of the United States, of the territory of Nevada, to the sheriff or any constable of the county aforesaid:

Whereas, A. B., of the county of ———, at a court of inquiry of an unlawful or forcible entry, or unlawful detainer, (as the case may be) held at my office (or state the place) in the county aforesaid, on the ——— day of ———, A. D. ———, before me, a justice of the peace for the county aforesaid, by the consideration of the court, hath recovered judgment against C. D., to have restitution of [here describe the premises, as in the complaint]. You are therefore commanded that, taking with you the force of the county, if necessary, you cause the said C. D. to be immediately removed from the aforesaid prem-

ises, and the said A. B. to have peaceable restitution of the same; and you are also commanded that, of the goods and chattels of the said C. D., within said county, you cause to be made the sum of ——— dollars for the said plaintiff, together with the costs of suit indorsed thereon, and make return hereof within thirty days from this date. Given under my hand, this ——— day of ———, A. D. ———. E. F., justice of the peace.

ACTION FOR THE PARTITION OF REAL PROPERTY.

SEC. 661. When several persons hold, and are in possession of real property, as joint tenants, or as tenants in common, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein; and for a sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

Action by
tenants in
common.

SEC. 662. The interest of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Complaint,
what to set
forth.

SEC. 663. No persons who have or claim any liens upon the property, by mortgage, judgment, or otherwise, need be made parties to the action, unless such liens be matters of record.

Parties.

SEC. 664. Immediately after filing the complaint, the plaintiff shall file with the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing, it shall be deemed notice to all persons.

Notice to be
filed in re-
corder's
office.

SEC. 665. The summons shall be directed to all the joint tenants and tenants in common, and all persons having an interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and generally, to all persons unknown, who have or claim any interest in the property.

Summons.

SEC. 666. If a party having a share or interest is unknown, or any one of the known parties reside out of the territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, shall be accompanied by a brief description of the property which is the subject of the action.

Publication
of.

SEC. 667. The defendants who have been personally served

Answer,
what to
set forth.

with the summons, and a certified copy of the complaint, shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property; and if such defendants claim a lien upon the property, by mortgage, judgment, or otherwise, they shall state the amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not; and if secured, the extent and nature of the security; or they shall be deemed to have waived their right to such lien.

Right of parties may be determined.

SEC. 668. The rights of several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made; and where service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties, before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

Certificates as to liens on property.

SEC. 669. The plaintiff shall produce to the court, on the hearing of the case, the certificate of the recorder of the county where the property is situated, showing whether there were or not any liens outstanding of record upon the property, or any part thereof, at the time of the commencement of the action.

Persons holding liens to be made parties.

SEC. 670. If it appear by the certificate of the recorder that there were outstanding liens of record at the time of the commencement of the action, and the persons holding or claiming such liens are not made parties to the action, the court shall either order such parties to be brought in by an amendment, or supplemental complaint, or appoint a referee to ascertain whether their liens have been paid; or if not paid, what amount remains due, and their order among the liens held by the parties who have appeared and answered; and whether the amount remaining due thereon has been secured in any way, and if secured, the extent and nature of the security.

Notice.

SEC. 671. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in last section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication, or notice to his agents, under the direction of the court, or in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set

aside, and a new reference ordered, as the justice of the case may require.

SEC. 672. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition, according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor: and shall designate the portion to remain undivided for the owners, whose interests remain unknown or are not ascertained.

Sale of
property,
when may
be ordered.

SEC. 673. In making the partition, the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, as determined by the court, designating the several portions by proper landmarks; and may employ a surveyor, with the necessary assistants, to aid them therein.

Partition,
how to be
made.

SEC. 674. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

Report of
referees.

SEC. 675. The court may confirm or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive—First. On all parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years, or as entitled to reversion, remainder, or inheritance of such property, or of any part thereof, after the termination of a particular estate therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life. Second. On all persons interested in the property, who may be unknown, to whom notice shall have been given of the action for partition, by publication; and, Third. On all other persons claiming from such parties or persons, or either of them.

Judgment
on, effect of.

SEC. 676. But such judgment and partition shall not affect tenants for years less than ten, to the whole of the property which is the subject of the partition.

Same.

SEC. 677. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be apportioned among the different parties to the action.

Expenses of
referees.

SEC. 678. When a lien is on an undivided interest or estate

Lien on
undivided
interest.

of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Estate for
life or years,
how set off.

SEC. 679. When a part of the property only is ordered to be sold, if there be an estate for life, or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Proceeds of
sale of in-
cumbered
property,
how applied.

SEC. 680. The proceeds of the sale of the incumbered property, shall be applied under the direction of the court, as follows: First. To pay its just proportion of the general costs of the action. Second. To pay the costs of the reference. Third. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due, the amount due to be verified by affidavit at the time of payment. Fourth. The residue among the owners of the property sold, according to their respective shares therein.

When there
are other se-
curities for
lien.

SEC. 681. When any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property, on account thereof.

Proceeds,
how to be
distributed.

SEC. 682. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, or as directed by the court.

Determina'n
of conflicting
claims.

SEC. 683. When the proceeds of sales of any shares or parcels, belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in original action.

Sales, how
made.

SEC. 684. All sales of real property made by referees under this chapter [of this act], shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property or any part of it is to be sold, subject to a prior estate, charge, or lien, that shall be stated in the notice.

Same.

SEC. 685. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase-money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase-money is

required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the territory.

SEC. 686. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase-money, of such parts of the property as directed by the courts to be sold on credit, for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the clerk of the county and his successors in office. Same.

SEC. 687. The person entitled to a tenancy for life, or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court. How tenant for life, etc., may receive satisfaction for estates sold.

SEC. 688. If such consent be not given, filed, and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate; and shall order the same to be paid to such party, or deposited in court for him, as the case may require. Same.

SEC. 689. If the person entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights, in the same manner, as far as may be, as if they were known and had appeared. Same.

SEC. 690. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties. Contingent future right or estate, how settled.

SEC. 691. In all cases of sale of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately. Terms and mode of sale

SEC. 692. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void. Certain parties not to be interested in purchase.

SEC. 693. After completing a sale of the property, or any part thereof ordered to be sold, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid as secured; the terms and conditions of the sale; and the securities, if any, taken. The report shall be filed in Report of sale.

the office of the clerk of the county where the property is situated.

Order to
execute
conveyance.

SEC. 694. If the sale be confirmed by the court, an order shall be entered, directing the referees to execute conveyances and take securities pursuant to such sale; which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

Where party
entitled
to share
purchases.

SEC. 695. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyance,
where re-
corded and
effect.

SEC. 696. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action; and against all such parties and persons as were unknown, if the summons had been served by publication, and against all persons claiming from them, or either of them.

Disposition
of proceeds
of sale, un-
known own-
er is inter-
ested.

SEC. 697. When there are proceeds of sale belonging to an unknown owner, or to a person without the territory, who has no legal representatives within it, the same shall be invested in securities on interest, for the benefit of the persons entitled thereto.

Same.

SEC. 698. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the county where the papers are filed, and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Security by
referees on
sale.

SEC. 699. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands, delivered to the referees, agree upon the shares and portions to which they are respectively entitled; or, when shares and proportions have been previously adjudged by the court, such securities shall be taken in the name of, and payable to, the parties respectively entitled thereto; and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

Same.

SEC. 700. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose, in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Compensa-
tion when

SEC. 701. When it appears that the partition cannot be made equally between the parties, according to their respective

rights, without prejudice to the rights and interests of some of them, and a partition be ordered by judgment, the court may adjudge compensation to be made by one party to another, on account of the inequality of partition. But such compensation shall not be required to be made to others, by owners unknown, nor by infants, unless, in case of an infant, it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

partition is unequal.

SEC. 702. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law, or directed by order of the court.

Proceeds of sale, infant's share paid to guardian.

SEC. 703. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property, from the referees, on executing, with sufficient securities, an undertaking, approved by a judge of the court, or by a probate judge, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or his legal representative.

Proceeds of sale, share of insane person.

SEC. 704. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant, or other person entitled, and may execute a release in his behalf to the owners of the shares, of the parts to which they may be respectively entitled, upon an order of the court, which partition shall be approved or disapproved by the court.

Partition may be consented to by guardian.

SEC. 705. The costs of partition, including fees of referees, and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case, they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

Cost of partition.

SEC. 706. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter [of this act]; and the single referee, when thus appointed, shall have all the

Single referee may be appointed.

powers and perform all the duties required of the three referees.

Mining
claim, parti-
tion of, how
made.

SEC. 707. When several persons hold and are in possession of mining claims, as joint tenants, or tenants in common, upon the petition of one or more of the joint tenants, or tenants in common, the court having jurisdiction shall appoint a commissioner, who shall proceed to make a partition of the property to be divided, and make a report to the court, as provided in this act.

Mining
claim, sale
injurious,
court to ap-
point com-
missioners.

SEC. 708. In case of partition of a mining claim, any of the tenants in common, or joint tenants, interested therein, may file an affidavit showing to the court that a sale for cash would be injurious to him, her or them; the court shall, upon such showing, appoint a commissioner, who shall decide such claim as hereinafter provided for.

How sold

SEC. 709. The commissioner provided for in the last section shall proceed to the place where such claim is located, and at such time as the court may direct, within not less than twenty nor more than forty days after such sale shall have been ordered by the court, shall sell such claim at auction to the highest bidder, in parts or parcels, to the joint tenants, or tenants in common, and shall receive bids in shares or undivided interests; or parts of such claim, to be divided.

Purchasers,
who deemed.

SEC. 710. The party or parties seeking the partition of such mining claim, shall be deemed the highest bidder, within the meaning of the last preceding section, who will take the least part or portion of such mining claim, at a place upon such claim to be selected by him, her or them, in proportion to the whole share, shares, or interest, held by such party or parties; *provided*, that if the remainder of the joint tenants, or tenants in common, shall fail to make a higher bid, in proportion to their joint shares or interests in such claim, then the bid of the party or parties seeking the partition, shall be received and declared to be the highest bid, and the commissioner shall proceed to measure off such claim to the party or parties, as hereinafter provided, and such claim, or part of the claim, so measured off by the said commissioner, to the highest bidder, shall be, and is hereby, considered as an entire surrender to the opposing party the remainder of his or her shares or interests in said claim, thereby relinquishing the residue of the shares or interests held by the party to whom was awarded the highest bid (not included in the measurement of said commissioner) to the adverse party.

Claims bid
for to be
segregated.

SEC. 711. Whenever any such bid as mentioned in sections seven hundred and nine and seven hundred and ten, shall have been received and declared, the commissioner shall go upon the claim and measure off to such bidder the amount of such claim so bid off at such place as the bidder shall elect.

SEC. 712. After setting off such bids, as provided in the last section, the commissioners shall again receive bids as herein

before provided, and shall thereafter measure off such bids, as provided for in section seven hundred and ten, and shall continue in the same manner to receive bids and set apart the same from such claims, until the parties who still hold an undivided portion of such mining claim, shall be satisfied that the sale cease, and are content to hold the remaining portion of such claims as joint tenants, or tenants in common, as the case may be. Same.

SEC. 713. The court may confirm, or set aside the report, and if necessary, appoint a new commissioner. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive. Court may dispose of report of commissioner

SEC. 714. The expenses and reasonable compensation of the commissioner, including those of the surveyor, when employed, shall be ascertained and allowed by the court, and shall be apportioned among the parties to the action. Commissioner's expenses etc.

CHAP. CIV.—*An Act to Regulate Proceedings in Criminal Cases in the Courts of Justice in the Territory of Nevada.*

[Approved November 26, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows :

I.—GENERAL DEFINITIONS AND PROVISIONS.

SECTION 1. A crime or public offense is an act or omission forbidden by law, and to which is annexed, on conviction— Crimes defined.
First. Death. Second. Imprisonment. Third. Fine. Fourth. Removal from office. Fifth. Disqualification to hold or enjoy any office of honor, trust or profit under this territory.

SEC. 2. Public offenses are divided into—First. Felonies. Second. Misdemeanors. Public offenses, how divided.

SEC. 3. A felony is a public offense punishable with death, or by imprisonment in the territorial prison. Felony.

SEC. 4. Every other public offense is a misdemeanor. Misdemeanor

SEC. 5. No person can be punished for a public offense except upon legal conviction in a court having jurisdiction. No punishment except on conviction.

SEC. 6. Every public offense must be prosecuted by indictment, except—First. Where proceedings are had for the removal of a civil officer of the territory. Second. Offenses arising in the militia when in actual service in time of war, or which this territory may keep, with the consent of congress, in time of peace. Third. Offenses tried in justices' courts. Prosecution by indictment, exceptions.

SEC. 7. The proceedings by which a party charged with a

Criminal action.	public offense is accused and brought to trial and punishment, shall be known as a criminal action.
How prosecuted.	SEC. 8. A criminal action shall be prosecuted in the name of the people of the United States in the territory of Nevada, as a party against the party charged with the offense.
Designation of party.	SEC. 9. The party prosecuted in a criminal action is designated in this act as the defendant.
Rights of defendant.	SEC. 10. In a criminal action the defendant is entitled— First. To a speedy and public trial. Second. To be allowed counsel, as in civil actions, or he may appear and defend in person, or with counsel; and, Third. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down in writing, and subscribed by the witness in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness, the deposition of such witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot, with due diligence, be found within the territory.
Second prosecution for same offense.	SEC. 11. No person shall be subject to a second prosecution for a public offense, for which he has once been prosecuted and duly convicted or acquitted.
Self crimination.	SEC. 12. No person shall be compelled, in a criminal action, to be a witness against himself, nor shall a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.
Mode of conviction.	SEC. 13. No person can be convicted of a public offense, tried by indictment, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment in the case, mentioned in section two hundred and ninety-three.

II.—PREVENTION OF PUBLIC OFFENSES.

Resistance to commission of crime.	SEC. 14. Lawful resistance to the commission of a public offense may be made—First. By the party about to be injured. Second. By other parties.
Resistance of party about to be injured	SEC. 15. Resistance sufficient to prevent the offense may be made by the party about to be injured—First. To prevent an offense against his person, or his family, or some member thereof. Second. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.
	SEC. 16. Any other person, in aid or defense of the person

about to be injured, may make resistance sufficient to prevent the offense. Other person may aid.

SEC. 17. Public offenses may be prevented by the intervention of the officers of justice—First. By requiring surety to keep the peace. Second. By forming a police in cities and towns, and by requiring their attendance in exposed places. Third. By suppressing riots. Prevention of offenses by public officers.

SEC. 18. Whenever the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command act in their aid, are justified in so doing. By other persons in aid.

SEC. 19. A complaint may be laid before any of the magistrates mentioned in section one hundred and two, that a person has threatened to commit an offense against the person or property of another. Complaint for threatening offense.

SEC. 20. When the complaint is laid before the magistrate, he shall examine, on oath, the complainant and any witness he may produce, and shall take their depositions in writing, and cause them to be subscribed by the parties making them. Examination of complainant.

SEC. 21. If it appears from the depositions that there is just reason to fear the commission of the offense threatened by the person so complained of, the magistrate shall issue a warrant directed generally to the sheriff of the county, or any constable, marshal, or policeman in the territory, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate. Magistrate to issue warrant. How warrant to be directed.

SEC. 22. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses. Hearing evidence in writing.

SEC. 23. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of shall be discharged. Complaint to be dismissed.

SEC. 24. If, however, there be just reason to fear the commission of the offense, the person complained of may be required to enter into a bond, in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace toward the people of this territory, and particularly towards the complainant. The bond shall be valid and binding for six months, and may, upon the renewal of the complaint, be extended for a longer period, or a new bond may be required. Surety to keep peace when required. Amount of bond.

SEC. 25. If the bond required by the last section be given, the party complained of shall be discharged. If he do not give it, the magistrate shall commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same. Commitment on failure of bond.

SEC. 26. If the person complained of be committed for not giving the bond required, he may be discharged by any magistrate, upon giving the same. Same, on discharge of.

- Bond to be filed.** SEC. 27. A bond given, as provided in section twenty-four, must be filed by the magistrate in the office of the clerk of the county.
- Breach of peace in presence of magistrate.** SEC. 28. Any person who, in the presence of a court or magistrate, shall assault, or threaten to assault another, or to commit any offense against his person or property, or who shall contend with another with angry words, may be ordered by the court or magistrate to give security, as is provided in section twenty-four, or, if he refuse to do so, may be committed, as provided in section twenty-five.
- Bond to keep peace, when forfeited.** SEC. 29. A bond to keep the peace shall be deemed broken on a conviction of the person complained against of a breach of the peace.
- Bond, where to be prosecuted.** SEC. 30. Upon the district attorney's producing evidence of such conviction to the district court of the United States in the territory of Nevada, the court shall order the bond to be prosecuted, and the district attorney shall thereupon commence an action on the same, in the name of the people of this territory.
- Evidence of breach of bond.** SEC. 31. In the action, the offense stated in the record of conviction shall be alleged as the breach of the bond, and shall be conclusive evidence thereof.
- No other security required.** SEC. 32. No security to keep the peace, or be of good behavior, shall be required except as herein prescribed.
- Police in cities and towns.** SEC. 33. The organization and regulation of the police force, in the cities and towns of this territory, are governed by special laws.
- Police in cities and towns.** SEC. 34. The mayor, or other officer, having the direction of the police in a city, town, or village, shall order a force sufficient to keep the peace to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.
- When sheriff may command assistance.** SEC. 35. When a sheriff, or other public officer, authorized to execute process, shall find, or have reason to apprehend, that resistance will be made to the execution of his process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, and their aiders and abettors, to be punished according to law.
- Registers of process to be reported.** SEC. 36. The officer shall certify to the court from which the process issued, the names of the resisters, and their aiders and abettors, to the end that they be proceeded against for their contempt of court.
- Refusal to assist officer, misdemeanor.** SEC. 37. Every person commanded by a public officer to assist him in the execution of process, as provided in section thirty-five, who shall, without lawful cause, refuse or neglect to obey the command, shall be deemed guilty of a misdemeanor.
- Governor to aid sheriff, when.** SEC. 38. If it appear to the governor that the power of any county is not sufficient to enable the sheriff to execute process

delivered to him, he shall, on the application of the sheriff, order such military force from any other county or counties as shall be necessary.

SEC. 39. When six or more persons, whether armed or not, shall be unlawfully or riotously assembled in any city or town, the sheriff of the county, and his deputies, the mayor and aldermen of the city, or the constable of the town, and the justices of the peace, shall go among the persons so assembled, or as near to them as possible, and shall command them in the name of the people of the United States and territory of Nevada, immediately to disperse.

Riotous assembly to be dispersed.

SEC. 40. If the persons assembled do not immediately disperse, the magistrates and officers shall arrest them, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

Refusal to disperse may be arrested.

SEC. 41. If a person so commanded to aid the magistrates or officers, neglect or refuse to do so, he shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

Refusal to aid officer, misdemeanor.

SEC. 42. If a magistrate or officer, having notice of an unlawful or riotous assembly, as provided in section thirty-nine, neglect to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same, and arresting the offenders, he shall be deemed guilty of a misdemeanor.

Officer neglecting to aid in quelling riot, misdemeanor.

SEC. 43. If the persons so assembled and commanded to disperse, do not immediately disperse, any magistrate or officer before mentioned may command the aid of a sufficient number of persons, and may proceed in such manner as in his judgment is necessary to disperse the assembly and arrest the offenders.

Officer may command aid.

SEC. 44. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, it shall obey such orders in relation thereto as may have been made by the governor, or by a judge of a court of record, or the sheriff of the county, or by a magistrate or officer mentioned in section thirty-nine.

Armed force, by whose orders to act.

SEC. 45. When there is an unlawful or riotous assembly, with the intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the territory, and the fact is made to appear to the governor, or to a judge of the district court, or probate court, or to the sheriff of the county, either of those officers may issue an order, directed to the commanding officer of a division, brigade, regiment, battalion, or company, to order his command, or any part thereof (describing the kind and number of troops), to appear at a time and place therein specified, to aid the civil authorities in suppressing violence and enforcing the laws.

Orders for troops to suppress unlawful assembly, by whom made.

SEC. 46. The commanding officer to whom the order is given, shall forthwith obey the same, and the troops so required shall appear at the time and place appointed, armed and

Order to be obeyed.

equipped, with ammunition as per inspection, and shall execute any order that they shall then and there receive, according to law.

Governor
may pro-
claim county
in state of
insurrection.

SEC. 47. When the governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force, exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the district attorney, or probate judge of the county, by proclamation to be published in such papers as he shall direct, declare the county to be in a state of insurrection, and may order into the service of the territory such number and description of volunteer or uniform companies, or other militia of the territory, as he shall deem necessary, to serve for such term and under the command of such officer or officers as he shall direct.

Revocation
of such pro-
clamation.

SEC. 48. The governor may, when he shall think proper, revoke the proclamation authorized by the last section, or declare that it shall cease at such time and in such manner as he shall direct.

Resisting
authorities
after such
proclamat'n,
punishment.

SEC. 49. Any person who shall, after the publication of the proclamation authorized by section forty-seven, resist or aid in resisting the execution of process in any county so declared to be in a state of insurrection, or who shall aid or attempt the rescue or escape of any person from lawful custody or confinement, or who shall resist or aid in resisting any force ordered out by the governor to quell or suppress an insurrection, shall be punished by imprisonment, in a territorial prison, for a term not less than two years.

III.—PROCEEDINGS FOR REMOVAL OF PUBLIC OFFICERS.

Officer sub-
ject to im-
peachment.

SEC. 50. Any territorial officer, created by territorial law, shall be liable for impeachment for any misdemeanor in office.

Impeachm't,
how tried.

SEC. 51. All impeachments shall be tried by the council; when sitting for that purpose, the councilmen shall be upon oath or affirmation.

Proceedings
to impeach.

SEC. 52. When a civil officer of the territory is impeached by the house of representatives for a misdemeanor in office, the articles of impeachment shall be delivered to the president of the council.

Same.

SEC. 53. The council shall assign a day for hearing the impeachment, and shall inform the house of representatives thereof. The president of the council shall cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant, not less than ten days before the day fixed for the hearing.

Same.

SEC. 54. The service must be upon the defendant personally, or if he cannot, upon diligent inquiry, be found within

the territory, the council, upon due proof of that fact, may order that publication be made in such manner as they deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

SEC. 55. If the defendant do not appear, the council, upon proof of service or publication, as provided in the last two sections, may, of their own motion, or for cause shown, assign another day for hearing the impeachment; or may then, or at any other time which they may appoint, proceed, in the absence of the defendant, to trial and judgment. Same.

SEC. 56. When the defendant appears, he must answer the articles of impeachment, which he may do, either by objecting to the sufficiency of the same, or of any article therein, or by denying the truth of the same. Same.

SEC. 57. If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral and without oath, and shall be entered upon the journal. Same.

SEC. 58. If an objection to the sufficiency of the impeachment be not sustained by a majority of the members of the council, who heard the argument, the defendant shall be ordered forthwith to answer the articles of impeachment. If he plead guilty, or refuse to plead, the council shall render judgment of conviction against him. If he deny the matters charged, the council shall, at such time as they may appoint, proceed to try the impeachment. Same.

SEC. 59. At the time and place appointed, and before the council proceed to act on the impeachment, the secretary shall administer to the president of the council, and the president of the council to each of the members of the council then present, an oath or affirmation truly and impartially to hear, try, and determine the impeachment, and no member of the council shall act or vote upon the impeachment, or any question arising thereon, without having taken such oath or affirmation. Same.

SEC. 60. The oath or affirmation having been administered, the council shall proceed to try and determine the impeachment, and may adjourn the trial from time to time. Same.

SEC. 61. The defendant cannot be convicted on impeachment without the concurrence of two thirds of the members present; and if two thirds of the members present do not concur in a conviction he shall be declared acquitted. Two thirds necessary to convict.

SEC. 62. After conviction the council shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution entered upon the journals of the council. The vote upon the passage thereof shall be taken by yeas and nays, and shall in like manner be entered upon the journal. Judgment.

SEC. 63. On the adoption of the resolution by a majority Same.

of the members present, who voted on the question of acquittal or conviction, the same shall be the judgment of the council.

Same.

SEC. 64. The judgment may be that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of honor, trust, or profit, under this territory.

Same.

SEC. 65. If judgment of suspension be given, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, fees, or emoluments of the office.

Officer suspended by articles of impeachment.

SEC. 66. Whenever articles of impeachment against any officer subject to impeachment, shall be presented to the president of the council, such officer shall be temporarily suspended from his office, and shall not act in his official capacity until duly acquitted. Upon such suspension of any territorial officer, created by territorial law, the governor shall immediately take charge of his office, and such office shall at once be temporarily filled by appointment by the governor, by and with the advice and consent of the council, until the acquittal of the party impeached; or, in case of his removal, then until the vacancy be filled as provided by law.

Indictment not barred by impeachment.

SEC. 67. If the offense for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment.

Proceedings against officers.

SEC. 68. An accusation in writing against any district, county, or township officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for which the officer accused is elected or appointed.

Same.

SEC. 69. The accusation shall state the offense charged in ordinary and concise language, and without repetition.

Same.

SEC. 70. The accusation shall be delivered by the foreman of the grand jury to the district attorney of the county, who shall cause a copy thereof to be served upon the defendant, and require by notice, in writing, of not less than ten days, that he appear before the district court then sitting, or at the next term, and answer the accusation. The original accusation shall then be filed with the clerk of the district court.

Same.

SEC. 71. The defendant must appear at the time appointed in the notice, and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

Same.

SEC. 72. The defendant may answer the accusation, either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

Same.

SEC. 73. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection.

Same.

SEC. 74. If he deny the truth of the accusation, the denial

may be oral and without oath, and shall be entered upon the minutes.

SEC. 75. If an objection to the sufficiency of the accusation be not sustained, the defendant shall be required to answer the accusation forthwith. Same.

SEC. 76. If the defendant plead guilty, or refuse to answer the accusation, the court shall render judgment of conviction against him. If he deny the matters charged, the court shall immediately, or as soon thereafter as practicable, proceed to try the accusation. Same.

SEC. 77. The trial shall be by a jury, and shall be conducted in all respects in the same manner as the trial of an indictment for a misdemeanor. Trial by jury

SEC. 78. The district attorney and the defendant shall be respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon the trial of an indictment. Attendance of witnesses.

SEC. 79. Upon a conviction the court shall immediately, or within five days, as they may appoint, pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal. Judgment.

SEC. 80. From a judgment of removal an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action, but until such judgment be reversed the defendant shall be suspended from his office. Pending the appeal the office may be filled as in case of vacancy. Appeal.

SEC. 81. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation shall be delivered to the district judge of the district, who shall thereupon appoint some one to act as prosecuting officer in the matter, or shall place the accusation in the hands of the district attorney of an adjoining district, and require him to conduct the proceedings. Proceedings against district attorney.

IV. — PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

1. *Local Jurisdiction of Public Offenses.*

SEC. 82. Every person, whether an inhabitant of this territory, or any other state or country, or of a territory or district of the United States, shall be liable to punishment by the laws of this territory for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States. Who amenable to territorial laws.

SEC. 83. When the commission of a public offense commenced without the territory, is consummated within the boundaries thereof, the defendant shall be liable to punishment therefor in this territory, though he were without the territory at the time of the commission of the offense charged; *provided*, Offenses commenced out of territory, and ended within it.

he consummated the offense through the intervention of an innocent or guilty agent without this territory, or any other means proceeding directly from himself, and in such case the jurisdiction shall be in the county in which the offense is consummated.

Death by
dueling, out
of territory.

SEC. 84. When an inhabitant or resident of this territory shall, by any previous appointment or engagement, fight a duel without the jurisdiction of this territory, and in such duel a wound shall be inflicted upon any person whereof he shall die within this territory, the jurisdiction of the offense shall be in the county where the death shall happen.

Offense com-
mitted, part
in one coun-
ty and part
in another.

SEC. 85. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction shall be in either county.

On county
boundaries,
when cogni-
zable.

SEC. 86. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction shall be within either county.

On vessels.

SEC. 87. When an offense is committed within this territory on board a vessel navigating a river, bay, slough or lake, or lying therein in the prosecution of her voyage, the jurisdiction shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate.

Abduction
or kidnapp-
ing, where
cognizable.

SEC. 88. The jurisdiction of an indictment for the crime of forcibly stealing, taking or arresting any man, woman or child in this territory, and carrying him or her into another county, state or territory, or for forcibly taking or arresting any person or persons whomsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States, or for hiring, persuading, enticing, decoying or seducing by false promises, misrepresentations and the like, any negro, mulatto, Indian or colored person to go out of this territory, or to be taken or removed therefrom for the purpose and with the intent to sell such negro, mulatto, colored person or Indian into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, Indian or colored person, shall be, in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may in the prosecution of the offense have been brought, or in which an act shall be done by the offender in instigating, procuring, promoting, aiding in or being accessory to the commission of the offense, or in abetting the parties therein concerned.

Bigamy or
incest, where
cognizable.

SEC. 89. When the offense of bigamy or incest is committed in one county, and the defendant is apprehended in another, the jurisdiction shall be in either county.

SEC. 90. When property feloniously taken in one county by

burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense shall be in either county. But if at any time before the conviction of the defendant in the latter, he be indicted in the former county, the sheriff of the latter county shall, upon demand, deliver him to the sheriff of the former county, upon being served with a copy of the indictment, and upon receipt, indorsed thereon by the sheriff of the former county, of the body of the offender, and shall, on filing the copy of the indictment and receipt, be exonerated from all liability in respect to the custody of the offender.

Property stolen in one and taken into another county, where triable

SEC. 91. In the case of an accessory before or after the fact in the commission of a public offense, the jurisdiction shall be in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

Accessory, where triable

SEC. 92. When an act charged as a public offense is within the jurisdiction of another state or territory, as well as of this territory, a conviction or acquittal thereof in such territory or state shall be a bar to a prosecution or indictment therefor in this territory.

Trial in another state, etc. to bar indictment in certain cases.

SEC. 93. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county shall be a bar to a prosecution or indictment therefor in another.

Trial in one county to bar prosecution in another.

II.—TIME OF COMMENCING CRIMINAL ACTIONS.

SEC. 94. There shall be no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Murder, no limit to prosecution.

SEC. 95. An indictment for any other felony than murder must be found within three years after its commission.

Felony, three years.

SEC. 96. An indictment for any misdemeanor must be found within one year after its commission.

Misdemeanor one year.

SEC. 97. If, when the offense is committed, the defendant be out of the territory, the indictment may be found within the term herein limited after his coming within the territory, and no time during which the defendant is not an inhabitant of, or usually resident within, the territory, shall be a part of the limitation.

Time of absence of defendant from territory not included.

SEC. 98. An indictment is found within the meaning of this title, when it is duly presented by the grand jury in open court, and there received and filed.

Indictment, when deem'd found.

SEC. 99. In offenses committed before the passage of this act, indictments may be found at any time within the limitation herein above provided, and the time of limitation shall commence after the passage of this act.

Same.

III.—COMPLAINT, AND PROCEEDINGS THEREON TO THE COMMITMENT, INCLUSIVE.

SEC. 100. The complaint is the allegation made to a Complaint.

magistrate that a person has been guilty of some public offense.

Magistrates. SEC. 101. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

Who are magistrates. SEC. 102. The following persons are magistrates: First. The justices of the supreme court. Second. The probate judges. Third. Justices of the peace [and others] upon whom are conferred by law the powers of justices of the peace.

Magistrates to examine complaint on oath. SEC. 103. When a complaint is laid before a magistrate of the commission of a public offense, triable within the county, he must examine on oath the complainant or prosecutor, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Deposition, what to set forth. SEC. 104. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense, and the guilt of the defendant.

Warrant of arrest, when to issue. SEC. 105. If the magistrate be satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

Warrant. SEC. 106. A warrant of arrest is an order in writing in the name of the people of the United States and territory of Nevada, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

"COUNTY OF———

Form of.

The people of the United States and territory of Nevada, to any sheriff, constable, marshal, or policeman in this territory, or in the county of ———: A complaint, upon oath, has been this day laid before me, by A B, that the crime of [designate it] has been committed, and accusing C D thereof, you are therefore commanded forthwith to arrest the above named C D, and bring him before me at [naming the place], or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at ———, this ——— day of ———, 18——."

Name of defendant.

Date and signature of warrant.

SEC. 107. The warrant must specify the name of the defendant; if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed by the magistrate with his name of office.

How executed.

SEC. 108. The warrant must be directed to, and executed by, a peace officer.

Peace officers

SEC. 109. Peace officers are sheriffs of counties, and constables, marshal, and policemen of cities and towns respectively.

Warrant, to whom directed.

SEC. 110. If a warrant be issued by a justice of the supreme court, or probate judge, it may be directed generally to any sheriff, constable, marshal, or policeman in this territory, and

may be executed by any of those officers to whom it may be delivered.

SEC. 111. If it be issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed in that county, or if the defendant be in another county, it may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following effect: This warrant may be executed in the county of ———, or as the case may be.

Warrant to be executed in another county, now indorsed,

SEC. 112. If the offense charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section one hundred and sixteen.

Proceedings in arrest for felony.

SEC. 113. If the offense charged in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being so required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.

Same by defendant.

SEC. 114. On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of his having done so, and deliver the warrant and recognizance to the officer having charge of the defendant. The officer shall forthwith discharge the defendant from arrest, and shall, without delay, deliver the warrant and recognizance to the clerk of the court at which the defendant is required to appear.

Don't be certified on warrant.

SEC. 115. If, on the admission of the defendant to bail, as provided in section one hundred and thirteen, or if bail be not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided by the next section.

Defendant, if not taken before magistrate.

SEC. 116. When, by the preceding sections of this act, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer shall, at the same time, deliver to the magistrate the warrant, with his return, indorsed and subscribed by him.

Same.

SEC. 117. The defendant must, in all cases, be taken before the magistrate without unnecessary delay.

Same.

SEC. 118. If the defendant be brought before a magistrate, in the same county, other than the one who issued the warrant, the affidavits on which the warrant was granted, if the defendant insist upon an examination, shall be sent to such magistrate, or if they cannot be procured, the prosecutor and his witnesses shall be summoned to give their testimony anew.

Same, other than the one who issued the warrant.

SEC. 119. When a complaint is laid before a magistrate of

Proceedings on complaint for offense, triable in another county the commission of a public offense, triable within some other county of this territory, but showing that the defendant is in the county where the complaint is laid, the same proceedings shall be had as prescribed in this act, except that the warrant shall require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the complainant or prosecutor, and of the witnesses who may have been produced, shall be delivered by the magistrate to the officer to whom the warrant is delivered.

Duty of officer.

SEC. 120. The officer who executes the warrant shall take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and shall deliver to such magistrate the depositions and the warrant, with his return indorsed thereon, and such magistrate shall proceed in the same manner as upon a warrant issued by himself.

Same.

SEC. 121. If the offense charged in the warrant issued pursuant to section one hundred and nineteen, be a misdemeanor, the officer shall, upon being so required by the defendant, take him before a magistrate of the county in which the said warrant is issued, who shall admit the defendant to bail, and immediately transmit the warrant, depositions, and recognizance, to the clerk of the court in which the defendant is required to appear.

Arrest.

SEC. 122. Arrest is the taking of a person into custody that he may be held to answer for a public offense.

By whom to be made.

SEC. 123. An arrest may be either—First. By a peace officer, under a warrant. Second. By a peace officer, without a warrant; or, Third. By a private person.

Who required to aid in.

SEC. 124. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present, and acting in its execution.

At what time to be made.

SEC. 125. If the offense charged be a felony, the arrest may be made on any day, and at any time of the day, or night. If it be a misdemeanor, the arrest shall not be made at night, unless upon the direction of the magistrate, indorsed upon the warrant.

How made.

SEC. 126. An arrest shall be made by an actual restraint of the person of the defendant, or by his submission to the custody of the officers.

Unnecessary restraint forbidden.

SEC. 127. The defendant shall not be subjected to any more restraint than is necessary for his arrest and detention.

Officer to state authority.

SEC. 128. The officer shall inform the defendant that he acts under the authority of the warrant, and shall also show the warrant, if required.

Resistance of defendant

SEC. 129. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Power of officers.

SEC. 130. The officer may break open any outer or inner door, or window, of a dwelling-house, to execute the warrant,

if, after notice of his authority and purpose, he be refused admittance.

SEC. 131. An officer may break open any outer or inner door, or window, of a dwelling-house, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation. Same.

SEC. 132. A peace officer may, without a warrant, arrest a person—First. For a public offense, committed, or attempted, in his presence. Second. Where the person arrested has committed a felony, although not in his presence. Third. Where a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it. Fourth. On a charge made upon a reasonable cause of the commission of a felony by the party arrested. When may be made without warrant.

SEC. 133. To make an arrest, as provided in the last section, the officer may break open any outer or inner door, or window, of a dwelling-house, if, after notice of his office and purpose, he be refused admittance. May break open doors, etc.

SEC. 134. He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appear that a felony had not been committed. At night.

SEC. 135. When arresting a person without a warrant, the officer must inform him of his authority, and the cause of the arrest, except when he is in the actual commission of a public offense, or when he is pursued immediately after an escape. Officer to state authority.

SEC. 136. He may take before a magistrate any person, who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him. By bystander.

SEC. 137. When a public offense is committed in the presence of a magistrate, he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest. Offense committed in presence of magistrate.

SEC. 138. A private person may arrest another—First. For a public offense committed or attempted in his presence. Second. When the person arrested has committed a felony, although not in his presence. Third. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. Private person may make.

SEC. 139. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit, immediately after its commission. To state cause.

SEC. 140. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open any May break open doors, etc.

outer or inner door or window of a dwelling-house, for the purpose of making the arrest.

Duty after arrest.

SEC. 141. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

Escape and recapture.

SEC. 142. If a person arrested escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the territory.

Same.

SEC. 143. To retake the person escaping or rescued, the person pursuing may, after notice of his intention, and refusal of admittance, break open any outer or inner door or window of a dwelling-house.

Proceedings after arrest.

SEC. 144. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate shall immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

Time to procure counsel.

SEC. 145. He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose, and shall, upon the request of the defendant, require a peace officer to take a message to such counsel, within the township or city, as the defendant may name. The officers shall, without delay and without fee, perform that duty.

Examination.

SEC. 146. The magistrate shall, immediately after the appearance of counsel, or if defendant require the aid of counsel after waiting a reasonable time therefor, proceed to examine the case.

Commitment of.

SEC. 147. The examination must be completed at one session, unless the magistrate, for good cause shown, adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

Same.

SEC. 148. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, admit him to bail, or discharge him from custody upon the deposit of money, as provided in this act, as security for his appearance at the time to which the examination is adjourned.

Form of commitment

SEC. 149. The commitment for examination shall be by an indorsement signed by the magistrate on the warrant of arrest to the following effect: "The within named A. B., having been brought before me under this warrant, is committed for examination to the sheriff of the county of ____." If the sheriff be not present, the defendant may be committed to the custody of a peace officer.

Depositions to be read.

SEC. 150. At the examination the magistrate shall, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information. He shall

issue subpoenas for any witness required by the prosecutor or the defendant, as provided in section five hundred and thirty-six. Subpoenas.

SEC. 151. The witnesses shall be examined in the presence of the defendant, and may be cross-examined in his behalf. How witness examined.

SEC. 152. When the examination of witnesses on the part of the people is closed, the magistrate shall distinctly inform the defendant that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof), that the statement is designed to enable him, if he see fit, to answer the charge and to explain the facts alleged against him, that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial. Right of defendant to make statements.

SEC. 153. If the defendant waive his right to make a statement, the magistrate shall make a note thereof immediately following the depositions of the witnesses against the defendant, but the fact of his waiver shall not be used against the defendant on the trial. Waiver of such right.

SEC. 154. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing, without oath, and shall put to the defendant the following questions only: "What is your name and age? Where were you born? Where do you reside, and how long have you resided there? What is your business or profession? Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation." Proceedings when defendant chooses to make statement.

SEC. 155. The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it shall be corrected, until it is made conformable to what he declares to be the truth. Questions.

SEC. 156. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form: First. It must set forth in detail that the defendant was informed of his rights as provided by section one hundred and fifty-two, and that after being so informed he made the statement. Second. It must contain the questions put to him, and his answers thereto, as provided in sections one hundred and fifty-four and one hundred and fifty-five. Third. It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign it, his reason therefor must be stated as he gives it. Fourth. It must be signed and certified by the magistrate. Answers.

SEC. 157. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined. Statement to be in writing

SEC. 158. The witnesses produced on the part either of the people or of the defendant, shall not be present at the examination of the defendant; and while a witness is under exami- Authentication of form of.

Defendant's witnesses, examination of.

To be examined separately.

nation, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

May be conducted with closed doors.

SEC. 159. The magistrate shall, also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

When defendant discharged.

SEC. 160. After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offense has not been committed, or there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged, by an indorsement on the depositions and statement signed by him to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

Form of discharge.

Order to hold defendant to answer.

SEC. 161. If, however, it appear from the examination, that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall, in like manner, indorse on the depositions and statement, an order signed by him to the following effect: "It appearing to me by the within depositions, and statement (if any), that the offense therein mentioned (or any other offense according to the fact, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

Form of.

Offense not bailable, form of order

SEC. 162. If the offense be not bailable, the following words, or words to the same effect, shall be added to the indorsement: "And that he be committed to the sheriff of the county of _____."

Offenses bailable, form of order.

SEC. 163. If the offense be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, shall be added to the indorsement: "And I have admitted him to bail to answer by the recognizance hereto annexed."

Same.

SEC. 164. If the offense be bailable, and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, shall be added to the indorsement mentioned in section one hundred and sixty-one: "And that he be admitted to bail, in the sum of _____ dollars, and be committed to the sheriff of the county of _____, until he gives such bail."

Commitment

SEC. 165. If the magistrate order the defendant to be committed, as provided in sections one hundred and sixty-two and one hundred and sixty-four, he shall make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that

officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the commitment.

SEC. 166. The commitment must be to the following effect: Form of.
 "County of ———, (as the case may be). The people of the United States and territory of Nevada, to the sheriff of the county of ———: An order having been this day made by me, that A. B. be held to answer upon a charge of [stating briefly the nature of the offense, and as near as may be the time when, and place where, the same was committed], you are commanded to receive him into your custody, and detain him until he be legally discharged. Dated this ——— day of ———, 18—."

SEC. 167. On holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him on the part of the people, a written recognizance, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars. Witness to be recognized to appear.

SEC. 168. Whenever the magistrate shall be satisfied by proof, on oath, that there is reason to believe that any such witness will not fulfill his recognizance to appear and testify, unless security be required, he may order the witness to enter into a written recognizance, with such sureties and in such sum as he may deem meet for his appearance, as specified in the last section. Same.

SEC. 169. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section. Same.

SEC. 170. If a witness required to enter into recognizance to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate shall commit him to prison until he comply or be legally discharged. Failing to recognize, to be commit'd.

SEC. 171. When, however, it shall satisfactorily appear by the examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people; such examination shall be by question and answer, and shall be conducted in the same manner as the examination before a committing magistrate is required by this act to be conducted, and the witness shall thereupon be discharged. Conditional examination of witness unable to give security for appearance.

SEC. 172. The last section shall not apply to the prosecutor, or to an accomplice in the commission of the offense charged. Not to apply.

SEC. 173. When a magistrate has discharged a defendant, or has held him to answer, as provided in sections one hundred and sixty-one and one hundred and sixty-two, he shall return without delay to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, the Magistrate to make return to court.

statement of the defendant, if he have made one, and all recognizance of bail or for the appearance of witnesses, taken by him.

4. *Proceedings after Commitment and before Indictment.*

Prosecution
by indictment.

SEC. 174. All public offenses prosecuted in the district court must be prosecuted by indictment, except as provided in the next section.

By accusation.

SEC. 175. Where the proceedings are had for the removal of district, county or township officers, they may be commenced by an accusation in writing as provided in sections sixty-eight and eighty-one.

Where found

SEC. 176. All accusations against district, county and township officers, and all indictments, must be found in the district court.

Grand jury,
formation of.

SEC. 177. The formation of grand juries is prescribed by special statutes.

Challenge to.

SEC. 178. A challenge may be taken to the panel of the grand jury, or to any individual grand juror, in the cases hereinafter prescribed, by the people or by the defendant.

To the panel.

SEC. 179. A challenge to the panel may be interposed for one or more of the following causes: First. That the requisite number of ballots was not drawn from the jury box of the county as prescribed by law. Second. The notice of the drawing of the grand jury was not given as prescribed by law. Third. That the drawing was not had in the presence of the officers or officer designated by law.

To the polls.

SEC. 180. A challenge to an individual grand juror may be interposed for one or more of the following causes only: First. That he is a minor. Second. That he is an alien. Third. That he is insane. Fourth. That he is the prosecutor upon a charge against the defendant. Fifth. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such. Sixth. That he has formed or expressed a decided opinion that the defendant is guilty of the offense for which he is held to answer.

How made
and tried.

SEC. 181. The challenges mentioned in the last three sections may be oral, and shall be entered upon the minutes, and tried by the court in the same manner as challenges in the case of a trial jury which are triable by the court.

Decision on.

SEC. 182. The court shall allow or disallow the challenge, and the clerk shall enter its decisions in the minutes.

Effect of
challenge
to panel.

SEC. 183. If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charge against the defendant by whom the challenge was interposed. If they should, notwithstanding, do so, and find an indictment against him, the court shall direct the indictment to be set aside.

Effect of
challenge to
the polls.

SEC. 184. If a challenge to an individual grand juror be allowed, he shall not be present at, or take part in, the consid-

eration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

SEC. 185. The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt. Violation, a contempt.

SEC. 186. A person held to answer to a charge for a public offense, can take advantage of any objection to the panel or to an individual grand juror, in no other mode than that by challenge, as prescribed in the preceding section. Objection to jury only by challenge.

SEC. 187. From the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman. The court shall also appoint a foreman when the person already appointed is discharged, or excused, before the grand jury is dismissed. Foreman of grand jury.

SEC. 188. The following oath shall be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire into, and true presentment make, of all public offenses against the people of the United States in the territory of Nevada, committed or triable within the jurisdiction of this court, of which you shall have or can obtain legal evidence. You shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise [or] hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." Oath of.

SEC. 189. The following oath shall be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you, and each of you, shall well and truly observe on your part, so help you God." Oath of others.

SEC. 190. The grand jury being impaneled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper, as to the nature of their duties, and any charges for public offenses returned to the court, or likely to come before the grand jury. The court need not, however, charge them respecting violations of any particular statute. Charge to grand jury.

SEC. 191. The grand jury shall then withdraw to a private room, and inquire into the offenses cognizable by them. Sittings.

SEC. 192. The grand jury, on the completion of the business before them, shall be discharged by the court, but whether the business be completed or not, they shall be discharged by the final adjournment of the court. Discharge.

SEC. 193. If an offense be committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury. Another grand jury.

SEC. 194. An order shall thereupon be made out by the clerk, and directed to the sheriff, requiring him to summon Order for.

twenty-four persons, qualified to serve as grand jurors, to appear forthwith, or at such time as may be named by the court.

Duty of
sheriff.

SEC. 195. The sheriff shall execute the order, and return it with a list of the names of the persons summoned.

How drawn.

SEC. 196. At the time appointed the list shall be called over, and the names of those in attendance be written by the clerk on separate ballots, and put into a box, from which a grand jury shall be drawn.

Trial jurors,
how formed.

SEC. 197. At the first, and at all subsequent terms of the district court, until an assessment roll in each county be made out and returned, so that a jury list may be formed, and a jury drawn as required by law, the grand jury and the trial jury shall be formed in the following manner:

Same.

SEC. 198. On the first day of the term, the court shall, by an entry on the minutes, direct an order to be issued to the sheriff of the judicial district, to summon thirty-six persons from the citizens of the county, and not from the bystanders, to appear forthwith, or at such time as may be named.

Same.

SEC. 199. The clerk shall issue the order, and the sheriff shall execute and return it at the time specified, with a list of the names of the persons so summoned. If he has been unable to summon the whole number in the time allowed, he shall return the order with the list of names summoned.

Same.

SEC. 200. The court may, in its discretion, enlarge the time of the return, and direct the sheriff to summon the whole number, or may proceed to impanel a grand jury from the number summoned.

Same.

SEC. 201. Upon the return of the order, or upon the expiration of the further time allowed, the names of the persons summoned shall be called, and the court shall proceed to impanel a grand jury and a trial jury, in like manner as if such persons had been impaneled upon a regular drawing of a jury.

Grand jury,
powers and
duties of.

SEC. 202. The grand jury has the power, and it is their duty, to inquire into all public offenses committed or triable within the jurisdiction of this court, and to present them to the court, either by presentment or indictment.

Indictment.

SEC. 203. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

Presentment

SEC. 204. A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed, which is triable within the district, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

Oath to
witness.

SEC. 205. The foreman may administer an oath to any witness appearing before the grand jury.

Evidence to
be received.

SEC. 206. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury shall receive

no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of witnesses taken as provided in this act.

SEC. 207. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence. Same.

SEC. 208. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses. For defend't.

SEC. 209. The grand jury ought to find an indictment, when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury. Indictment, when to be found.

SEC. 210. If a member of the grand jury know, or have reason to believe, that a public offense has been committed, which is triable within the jurisdiction of this court, he must declare the same to his fellow-jurors, who shall thereupon investigate the same. Information by member of.

SEC. 211. The grand jury must inquire into the case of every person imprisoned in the jail of the county, on a criminal charge, and not indicted; into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description within the county. Inquiries to be made.

SEC. 212. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the district. To have free access to prisons, etc.

SEC. 213. The grand jury may, at all reasonable times, ask the advice of the court, or any member thereof, and of the district attorney. Unless his advice be asked, no member of the court shall be permitted to be present during the session of the grand jury. The district attorney shall be allowed, at all times, to appear before the grand jury, on his request, for the purpose of giving information or advice relative to any matter cognizable by them; and may interrogate witnesses before them, when they shall deem it necessary. Except the district attorney, no person shall be permitted to be present before the grand jury, besides the witnesses actually under examination, and no person shall be permitted to be present during the expression of their opinions, or the giving of their votes upon any matter before them. Advice to.

SEC. 214. Every member of the grand jury shall keep secret whatever he himself, or any other grand juror, may have said, or in what manner he, or any other grand juror, may have voted on a matter before them. Who allowed to be present with.

Proceedings to be kept secret.

When may
be witness.

SEC. 215. A member of the grand jury may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

Not to be
questioned
relative to
acts.

SEC. 216. No grand juror shall be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow-jurors.

Presentment
how found.

SEC. 217. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so formed, it must be signed by the foreman.

Same.

SEC. 218. The presentment, when found, must be presented by the foreman, in the presence of the grand jury, to the court, and shall be filed by the clerk.

Not to be
disclosed.

SEC. 219. No grand juror, district attorney, clerk, judge, or other officer, shall disclose the fact of a presentment having been made for a felony until the defendant shall have been arrested. But this prohibition shall not extend to disclosure by the issuing or in the execution of a warrant to arrest the defendant.

Disclosure,
how pun-
ished.

SEC. 220. A violation of the provisions of the last section shall be punishable as a contempt and as a misdemeanor.

Bench war-
rants, when
to issue.

SEC. 221. If the court deem that the facts stated in the presentment constitute a public offense, triable within the county, it shall direct the clerk to issue a bench-warrant for the arrest of the defendant.

Same.

SEC. 222. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench-warrant, under his signature and the seal of the court, into one or more districts.

SEC. 223. The bench-warrant, upon presentment, shall be substantially in the following form:

Form of.

COUNTY OF _____.

The people of the United States of the territory of Nevada, to any sheriff, constable, marshal, or policeman, in this territory. A presentment having been made, on the _____ day of _____, 18—, to the district court of the district of _____, charging C. D. with the crime of _____ [designating it generally]; you are therefore commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this district, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in this district.

Given under my hand, with the seal of the said court affixed, this _____ day of _____, A. D. 18—. By order of the court.

G. H., Clerk.

SEC. 224. The bench-warrant may be served in any district, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on a complaint, except that when served in another district it need not be indorsed by a magistrate of that district. How executed.

SEC. 225. The magistrate, when the defendant is brought before him, shall proceed to examine the charge contained in the presentment, and hold the defendant to answer the same, or discharge him therefrom, in the same manner, in all respects, as upon a warrant of arrest on complaint. Proceedings on arrest.

V.—THE INDICTMENT.

SEC. 226. An indictment cannot be found without the concurrence of at least twelve grand jurors; when so found, it shall be indorsed "a true bill," and the indorsement shall be signed by the foreman of the grand jury. How found.

SEC. 227. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the deposition and statement, if any transmitted to them, shall be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed. Dismissal of charge.

SEC. 228. The dismissal of the charge shall not, however, prevent the same charge from being again submitted to a grand jury, or as often as the court shall so direct. But without such direction it shall not be again submitted. Effect of.

SEC. 229. When an indictment is found, the names of the witnesses examined before the grand jury shall be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court. Names of witnesses to be inserted.

SEC. 230. An indictment, when found by the grand jury, shall be presented by their foreman, in their presence, to the court, and shall be filed with the clerk, and remain in his office as a public record. To be presented to court.

SEC. 231. When an indictment has been found against a defendant not in custody, the same proceedings shall be had as are prescribed in sections two hundred and fifty-eight and two hundred and sixty-five, both inclusive, against a defendant who fails to appear for arraignment. Against defendant not in custody.

SEC. 232. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, shall be those which are prescribed by this act. Pleadings.

SEC. 233. The first pleading on the part of the people is the indictment. Indictment.

SEC. 234. The indictment shall contain the title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties; a statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended. What to contain.

Form of.	SEC. 235. It may be substantially in the following form: "The people of the United States of the territory of Nevada against A. B., in the district court of the judicial district in the county of — term, A. D. 18—. A. B. is accused by the grand jury of the counties of —, by this indictment, of the crime of [giving its legal appellation, such as murder, arson, manslaughter, or the like, or designating it as a felony, or misdemeanor], committed as follows: The said A. B., on the — day of —, A. D. 18—, at the county of —, [stating the act or omission constituting the offense, in the manner prescribed in this act, according to the forms mentioned in the next section, where they are applicable]."
Same.	SEC. 236. The indictment must be direct, and contain as it regards—First. The party charged. Second. The offense charged. Third. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.
Error in name of defendant.	SEC. 237. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceeding his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.
To charge only one offense.	SEC. 238. The indictment shall charge but one offense, but it may set forth that offense in different forms under different counts.
Manner of stating time of offense.	SEC. 239. The precise time at which it was committed need not be stated in the indictment, but it may be alleged to have been committed at any time before the finding of the same, except when the time is a material ingredient of the offense.
Erroneous allegations not material.	SEC. 240. When an offense involves the commission, or an attempt to commit private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured shall not be deemed material.
Construction of indictment.	SEC. 241. The words used in an indictment shall be construed in the usual acceptance in common language, except such words and phrases as are defined by law, which are to be construed according to their legal meaning.
Statute words not strictly followed.	SEC. 242. Words used in a statute to define a public offense, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.
Indictment, when sufficient.	SEC. 243. The indictment shall be sufficient if it can be understood therefrom—First. That it is entitled in a court having authority to receive it, though the name of the court be not accurately set forth. Second. That it was found by a grand jury of the district in which the court was held. Third. That the defendant is named, or, if his name cannot be discov-

ered, that he be described by a fictitious name, with a statement that he has refused to discover his real name. Fourth. That the offense was committed at some place within the jurisdiction of the court. Fifth. That the offense was committed at some time prior to the time of finding the indictment. Sixth. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. Seventh. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case.

SEC. 244. No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon, be affected by reason of any defect or imperfection in matters of form which shall not tend to the prejudice of the defendant.

Matters of
form not
vitiating.

SEC. 245. Neither presumption of law, nor matters of which judicial notice is taken, need be stated in an indictment.

What need
not be stated

SEC. 246. In pleading, a judgment or other determination of or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated, but it may be stated that the judgment or determination was duly made, or the proceeding duly had before such court or officer. The facts constituting the jurisdiction, however, must be established on the trial.

Judgment,
how pleaded.

SEC. 247. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to the statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Private
statute, how
pleaded.

SEC. 248. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

Indictment
for libel,
what to set
forth.

SEC. 249. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

Misdescription
of forged
instruments,
when immaterial.

SEC. 250. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy, or matter in respect to which the offense was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or the person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is con-

Perjury, in-
dictment for,
what to set
forth.

Indictment
against
several
defendants.

nected, nor the commission, or the authority of the court or person before whom the perjury was committed.

SEC. 251. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

No distinc-
tion between
principal
and acces-
sory.

SEC. 252. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, in cases of felony; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals.

Accessory
after the fact

SEC. 253. An accessory after the fact to the commission of a felony, may be indicted and punished, though the principal felon may be neither tried nor indicted.

Compound-
ing offense,
indictment
for.

SEC. 254. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity, or a reward, or an engagement, or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

When de-
fendant to
be arraigned

SEC. 255. When the indictment is filed the defendant must be arraigned thereon before the court in which it is found, except in the cases mentioned in sections two hundred and seventy-six and two hundred and seventy-seven.

When must
appear per-
sonally.

SEC. 256. If the indictment be for a felony, the defendant must be personally present; but if for a misdemeanor, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

How
arraigned.

SEC. 257. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned, and the officer shall do so accordingly.

Defendant
failing to
appear.

SEC. 258. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the recognizance or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

Warrant for
arrest of.

SEC. 259. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench-warrant into one or more counties.

Form of.

SEC. 260. The bench-warrant upon the indictment shall, if the offense be a felony, be substantially in the following form:

"County of _____. The people of the United States of the territory of Nevada, to any sheriff, constable, marshal or policeman, in this territory. An indictment having been found on the _____ day of _____, A. D. 18—, in the district court of the

judicial district of the county of ———, charging C. D. with the crime of ——— [designating it generally]. You are therefore commanded forthwith to arrest the above named C. D., and bring him before that court to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of ———. Given under my hand, with the seal of the court affixed, this the ——— day of ———, A. D. 18—. [SEAL]. By order of the court. E. F., Clerk.

SEC. 261. The defendant, if the offense be punishable with death, when arrested under the warrant, shall be held in custody by the sheriff of the county in which the indictment is found, unless admitted to bail, on an examination upon a writ of *habeas corpus*. Proceedings on arrest.

SEC. 262. If the offense be not capital, the bench-warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "Or if he require it, that you take him before any magistrate in that district, or in the district in which you arrested him, that he may give bail to answer to the indictment." Form of warrant.

SEC. 263. If the offense charged be not capital, the court upon directing the bench-warrant to issue, shall fix the amount of bail, and an indorsement shall be made upon the bench-warrant, signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of ——— dollars." When offense not capital.

SEC. 264. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county. Warrant, how served.

SEC. 265. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in all respects thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon, as provided in sections one hundred and twelve and one hundred and fifteen, both inclusive. Bail in another county

SEC. 266. When the indictment is for felony, and the defendant before the finding thereof has given bail for his appearance to answer the charge, the court to which the indictment is presented, may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order. Defendant may be ordered in custody for further bail.

SEC. 267. If such order be made and the defendant be present, he shall be forthwith committed accordingly. If he be not present a bench-warrant shall be issued and proceeded upon in the manner provided for in this act. Defendant to be committed.

SEC. 268. If the defendant appear for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desire the aid of counsel. Counsel for defendant.

- Arraignm't, how made.** SEC. 269. The arraignment must be made by the court, or by the clerk or district attorney under its direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses indorsed on it, and in asking him whether he pleads guilty or not guilty to the indictment.
- Defendant to declare true name.** SEC. 270. When the defendant is arraigned, he shall be informed that if the name by which he is indicted be not his true name he must then declare his true name, or be proceeded against by the name in the indictment.
- Other name.** SEC. 271. If he give no other name, the court may proceed accordingly.
- Entry of name on minutes.** SEC. 272. If he allege that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.
- Time to answer.** SEC. 273. If on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment.
- Defendant may answer, demur, or plead.** SEC. 274. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.
- Indictment, setting aside.** SEC. 275. The indictment shall be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases: First. Where it is not found, indorsed and presented as prescribed in this act. Second. Where the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon. Third. Where any person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment is under consideration, except as provided in section two hundred and thirteen.
- Same.** SEC. 276. Where the defendant had not been held to answer before the finding of the indictment, he may move to set it aside on any ground which would have been good ground for challenge, either to the panel or any individual grand juror.
- Motion not made no objection.** SEC. 277. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the two last sections.
- Hearing of motion.** SEC. 278. The motion shall be heard when it is made, unless for good cause the court shall postpone the hearing to another time.
- Motion denied, defendant to answer.** SEC. 279. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

SEC. 280. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he have deposited money instead of bail, that the same shall be refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

Motion
granted, de-
fendant to
be discharg'd

SEC. 281. If the court direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

Case resub-
mitted, pro-
ceedings.

SEC. 282. Unless a new indictment be found before the next grand jury of the district is discharged, the court shall, on the discharge of such grand jury, make the order prescribed in section two hundred and eighty.

Order for
discharge.

SEC. 283. An order to set aside an indictment, as provided in this act, shall be no bar to a future prosecution for the same offense.

Indictment
set aside no
bar to future
prosecution.

SEC. 284. The only pleading on the part of the defendant is either a demurrer or a plea.

Pleadings by
defendant.

SEC. 285. Both the demurrer and the plea must be put in, in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose,

Demurrer
and plea,
when to
put in.

SEC. 286. The defendant may demur to the indictment when it shall appear upon the face thereof, either—First. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the court. Second. That it does not substantially conform to the requirements of sections two hundred and thirty-four and two hundred and thirty-five. Third. That more than one offense has been charged in the indictment. Fourth. That the facts stated do not constitute a public offense. Fifth. That the indictment contains any matter which, if true, would constitute a legal justification, or excuse of the offense charged, or other bar to the prosecution.

Demurrer,
for what
cause.

SEC. 287. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it shall be disregarded.

Form of,
and what to
specify.

SEC. 288. Upon the demurrer being filed, the objections presented thereby shall be heard either immediately, or at such time as the court may appoint.

Hearing of.

SEC. 289. Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered on the minutes.

Judgment
on demurrer

SEC. 290. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution of the same offense, unless the court, being of opinion that the objection on which the demurrer is

Effect of
allowance
of demurrer.

allowed may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury.

Case not re-submitted, effect of.

SEC. 291. If the court do not direct the case to be resubmitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail shall be exonerated, or if he has deposited money instead of bail, the money shall be refunded to him.

Case submitted, proceeding.

SEC. 292. If the court direct that the case be resubmitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty-one and two hundred and eighty-two.

Effect of disallowing demurrer.

SEC. 293. If the demurrer be disallowed, the court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow; if he do not plead, judgment shall be pronounced against him.

Objections to demurrer, how taken advantage of.

SEC. 294. When the objections mentioned in section two hundred and eighty-six appear upon the face of the indictment, they can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial under the plea of not guilty, and in arrest of judgment.

Pleas, kinds of.

SEC. 295. There are three kinds of pleas to an indictment. A plea of—First. Guilty. Second. Not guilty. Third. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of “not guilty.”

To be oral.

SEC. 296. Every plea shall be oral, and shall be entered upon the minutes of the court.

Entry of.

Form of.

SEC. 297. The plea shall be entered in substantially the following form: First. If the defendant plead guilty, “the defendant pleads that he is guilty of the offense charged in this indictment.” Second. If he plead not guilty, “the defendant pleads that he is not guilty of the offense charged in the indictment.” Third. If he plead a former acquittal or conviction, “the defendant pleads that he has already been convicted (or acquitted, as the case may be), of the offense charged in the indictment, by the judgment of the court of —, [naming it] rendered at —, [naming the place], on the — day of —.”

Plea of guilty, how put in.

SEC. 298. A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

May be withdrawn.

SEC. 299. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

Plea of not guilty, effect of.

SEC. 300. The plea of not guilty shall be deemed a denial of every material allegation in the indictment.

Evidence under.

SEC. 301. All matters of fact, tending to establish a defense other than that specified in the third subdivision of section two

hundred and ninety-five, may be given in evidence under the plea of not guilty.

SEC. 302. If the defendant were formerly acquitted, on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offense. Former acquittal, what deemed.

SEC. 303. When, however, he shall have been acquitted on the merits, he shall be deemed acquitted of the same offense, notwithstanding any defect, in form or substance, in the indictment on which he was acquitted. Same.

SEC. 304. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment, as provided in section four hundred and twelve. Effect of former acquittal or conviction.

SEC. 305. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered. Defendant mute, plea of not guilty.

SEC. 306. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending. When criminal action may be removed to another county.

SEC. 307. The application must be made in open court, and in writing, verified by the affidavit of the defendant, and a copy of said affidavit must be served on the district attorney, at least one day before the application is made to the court: Application, how made.

SEC. 308. If the court be satisfied that the representation of the defendant is true, an order shall be made for the removal of the action to the district court of a county which is free from the like objection. When and to what court order made.

SEC. 309. The order of removal shall be entered on the minutes, and the clerk shall immediately make out and transmit a certified copy of the entry, with a certified copy of the record, pleadings and proceedings in the action, including the recognizances for the appearance of the defendant, and of the witnesses, to the court to which the action is removed. Order entered on minutes, copy of record transmitted.

SEC. 310. If the defendant be in custody, the order shall direct his removal by the sheriff of the county where he is imprisoned, to the custody of the sheriff of the county to which the action is removed, and he shall be forthwith removed accordingly. Order to direct removal of defendant.

SEC. 311. The court to which the action is removed shall proceed to trial and judgment therein, as if the action had been commenced in such court. If it be necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed shall, at any time, on application of the district attorney, or the defendant, order Proceedings after removal

such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

Issue of fact
arises.

SEC. 312. An issue of fact arises—First. Upon a plea of not guilty; or, Second. Upon a plea of a former conviction or acquittal of the same offense.

How tried.

SEC. 313. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed by order of the court into some other county.

Jury trial,
how formed.

SEC. 314. Trial juries for criminal actions shall be formed in the same manner as trial juries for civil actions.

Docket of
action, how
kept.

SEC. 315. The clerk shall keep a docket of all the criminal actions pending in the court, in which he shall enter each indictment, according to the date of filing, specifying opposite the title of each action, whether it be for a felony or misdemeanor, or whether the defendant be in custody or on bail.

Issues on
docket, how
disposed of.

SEC. 316. The issues on the docket shall be disposed of in the following order, unless upon the application of either party, for good cause shown by affidavit, and upon two days' notice to the opposite party, with a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order—First. Indictments for felony when the defendant is in custody. Second. Indictments for misdemeanor when the defendant is in custody. Third. Indictments for felony when the defendant is on bail; and, Fourth. Indictments for misdemeanor when the defendant is on bail.

Time to pre-
pare for trial

SEC. 317. After his plea, the defendant shall have at least two days to prepare for his trial, if he require it.

Postponem't
of trial.

SEC. 318. When an indictment is called for trial, the court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same term, or the next term.

Challenging
the jury.

SEC. 319. A challenge is an objection made to the trial jurors, and is of two kinds—First. To the panel. Second. To an individual juror.

By several
defendants.

SEC. 320. When several indictments are tried together, they are not allowed to sever their challenges, but must join therein.

Panel.

SEC. 321. A panel is a list of jurors returned by a sheriff to serve at a particular court, or for the trial of a particular cause.

To the panel

SEC. 322. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

On what
founded.

SEC. 323. A challenge to the panel can only be founded on a material departure from the forms prescribed by statute in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

When and
how to be
taken.

SEC. 324. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge.

SEC. 325. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered on the minutes of the court. Exception to

SEC. 326. Upon the exception, the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true. Trial of.

SEC. 327. If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge. Exception may be withdrawn. Amending challenge.

SEC. 328. If the challenge be denied, the denial may, in like manner, be oral, and shall be entered on the minutes of the court, and the court shall proceed to try the question of fact. Denial and trial of.

SEC. 329. Upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the grounds of challenge. Witnesses and trial of.

SEC. 330. When the panel is formed from persons whose names are not drawn from the grand jury box, a challenge may be made to the panel on account of any bias of the officer who summoned the jury, which would be good ground of challenge to a juror. Such objection shall be made in the same form, and determined in the same manner as when made to a juror. An account of bias of officer summoning.

SEC. 331. If, either upon an exception to the challenge, or a denial of the fact, the challenge be allowed, the court shall discharge the jury, so far as the trial of the indictment in question is concerned. If it be disallowed, the court shall direct the jury to be impaneled. Effect of allowing.

SEC. 332. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge any individual juror, he must do so when the juror appears, and before he is sworn. Challenge to the polls.

SEC. 333. A challenge to an individual juror is either— Kinds of. First. Peremptory; or, Second. For cause.

SEC. 334. It must be taken when the juror appears, and before he is sworn, but the court may for good cause permit it to be taken after the juror is sworn, and before the jury is completed. When to be taken,

SEC. 335. A peremptory challenge may be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court shall exclude him. Peremptory, how taken.

SEC. 336. If the offense charged be punishable with death, or with imprisonment in the territorial prison for life, the defendant is entitled to twenty, and the territory to five, peremptory challenges. On a trial for any other offense, the Number of.

defendant is entitled to ten, and the people to three, peremptory challenges.

For cause.

SEC. 337. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either—First. General, that the juror is disqualified from serving in any case; or, Second. Particular, that he is disqualified from serving in the case on trial.

General causes of.

SEC. 338. General causes of challenge are: First. A conviction for felony. Second. A want of any of the qualifications prescribed by statute to render a person a competent juror. Third. Unsoundness of mind, or such defect in the faculties of the mind or the organs of the body as renders him incapable of performing the duties of a juror.

Particular causes of.

SEC. 339. Particular causes of challenge are of two kinds: First. For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this act as implied bias. Second. For the existence of a state of mind on the part of the juror in reference to the case which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this act as actual bias.

Challenge for implied bias, causes of.

SEC. 340. A challenge for implied bias may be taken for all or any of the following causes, and for no other: First. Consanguinity, or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant. Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages. Third. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution. Fourth. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment. Fifth. Having served on a trial jury which has tried another person for the offense charged in the indictment. Sixth. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it. Seventh. Having served as a juror in a civil action brought against the defendant for the act charged as an offense. Eighth. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged. Ninth. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the

defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

SEC. 341. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted. Exemption not cause for.

SEC. 342. In a challenge for an implied bias, one or more of the causes stated in section three hundred and forty must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the court. How taken.

SEC. 343. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings shall be had thereon as prescribed in sections three hundred and twenty-five and three hundred and twenty-six, except that if the exception be allowed the juror shall be excluded. He may orally deny the facts alleged as the ground of challenge. Exceptions to, and proceedings thereon.

SEC. 344. If the facts be denied, the challenge shall be tried as follows: First. If it be for implied bias, by the court. Second. If it be for actual bias, by triers. Trial of.

SEC. 345. The triers shall be three impartial persons, not on the jury panel, appointed by the court. All challenges for actual bias shall be tried by three triers thus appointed, a majority of whom may decide. Triers, who to be.

SEC. 346. The triers shall be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are biased against the challenging party, and to decide the same truly, according to the evidence. Oath of triers.

SEC. 347. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and shall be compelled to answer every question pertinent to the inquiry therein. Juror challenged may be witness.

SEC. 348. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge. Other testimony.

SEC. 349. On the trial of a challenge for implied bias, the court shall determine the law and the facts, and shall either allow or disallow the challenge, and direct an entry accordingly on the minutes. Court to determine law and facts.

SEC. 350. On the trial of a challenge for actual bias, when the evidence is concluded, the court shall instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial, and that if, from the evidence, they believe him free from such a bias, they must find the challenge not true. The court shall give them no other instructions. Instructions to triers.

SEC. 351. The triers must thereupon find the challenge

Triers, decision final.

either true or not true, and their decision is final. If they find it true the juror shall be excluded.

Order of taking challenges.

SEC. 352. All challenges to an individual juror, except peremptory, must be first taken by the defendant, and then by the people, and each party must exhaust all his challenges to each juror as he is called, before the other begins.

Same.

SEC. 353. The challenges of either party need not all be taken at once, but they must be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class: First. To the panel. Second. To an individual juror for a general disqualification. Third. To an individual juror for implied bias. Fourth. To an individual juror for actual bias.

Final peremptory challenge.

SEC. 354. If all the challenges on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted.

6. Trial.

Order of.

SEC. 355. The jury having been impaneled and sworn, the trial shall proceed in the following order: First. If the indictment be for felony, the clerk must read the indictment and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with. Second. The district attorney or other counsel for the people must open the cause, and offer the evidence in support of the indictment. Third. The defendant or his counsel may then open the defense, and offer his evidence in support thereof. Fourth. The parties may then respectively offer rebutting testimony only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original cause. Fifth. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the people must open and must conclude the argument. Sixth. The judge shall then charge the jury if requested by either party; he may state the testimony and declare the law; but shall not charge the jury in respect to matters of fact; such charge shall be reduced to writing before it is given; and in no case shall any charge or instructions be given to the jury, otherwise than in writing, unless by the mutual consent of the parties.

When prescribed may be departed from.

SEC. 356. When the state of the pleadings require it, or in any other case, for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

Counsel, number of.

SEC. 357. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. If it be for any other offense, the court may in its discretion restrict the argument to one counsel on each side.

SEC. 358. A defendant in a criminal action is presumed to

be innocent until the contrary be proved; and in case of a reasonable doubt whether his guilt be satisfactorily shown, he is entitled to be acquitted. Innocence presumed.

SEC. 359. When it legally appears that a defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only. Reasonable doubt of guilt. Degrees of guilt.

SEC. 360. When two or more defendants are jointly indicted for any offense, they shall be jointly tried, unless for good cause shown by the prosecution or defense, the court shall otherwise direct. When defendant may be tried separately.

SEC. 361. When two or more persons are included in the same indictment, the court may at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people. When defendant may turn state's evidence.

SEC. 362. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it shall order him to be discharged from the indictment, before the evidence shall be deemed closed, that he may be a witness for his co-defendant. When defendant may be witness for co-defendant.

SEC. 363. The order mentioned in the two last sections shall be deemed an acquittal of the defendant discharged, and shall be a bar to another prosecution for the same offense. Discharge deemed acquittal.

SEC. 364. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature. Rape, proof of.

SEC. 365. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely show the commission of the offense or the circumstances thereof. Accomplice, evidence of to be corroborated.

SEC. 366. If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new indictment which may be found against him for the higher offense. Proceedings where facts show offense greater than charged.

SEC. 367. If an indictment for the higher offense be dismissed by the grand jury, or be not found at or before the next term, the court shall again proceed to try the defendant on the original indictment. Same.

SEC. 368. The court may also direct the jury to be discharged when it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law. When jury may be discharged.

SEC. 369. If the jury be discharged because the court has

When
defendant
discharged.

not jurisdiction of the offense charged in the indictment, and it appear that it was committed out of the jurisdiction of this territory, it shall order the defendant to be discharged.

Proceedings
when exclu-
sive juris-
diction of
offense in
another
county.

SEC. 370. If the offense were committed within the exclusive jurisdiction of another district of this territory, the court shall direct the defendant to be committed for such time as shall be deemed reasonable to await a warrant from the proper county for his arrest, or if the offense be a misdemeanor only, it may admit him to bail in a recognizance with sufficient sureties that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had at a certain time particularly designated in the recognizance, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the recognizance.

Clerk to
transmit
papers.

SEC. 371. In the case provided for in the last section, the clerk shall forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the district attorney of the proper county, the expense of which transmission shall be chargeable to that county.

When
defendant
discharged.

SEC. 372. If the defendant be not arrested, as provided in section three hundred and seventy, on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money deposited instead of bail shall be refunded, as the case may be, and the sureties in the recognizance shall be discharged.

Proceedings
on arrest in
such cases.

SEC. 373. If he be arrested, the same proceedings shall be had thereupon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

Proceedings
when facts
do not con-
stitute
offense.

SEC. 374. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court shall order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in the opinion of the court a new indictment can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury.

Proceedings
when case
submitted
anew.

SEC. 375. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty-one and two hundred and eighty-two, both inclusive.

Acquittal,
when court
may advise,
effect of.

SEC. 376. If at any time after the evidence on either side is closed, the court deem the same insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury shall not be bound by such advice, nor shall the court for any cause prevent the jury from giving a verdict, except as provided in sections three hundred and sixty-one, three

hundred and sixty-two, three hundred and sixty-six, and three hundred and sixty-eight.

SEC. 377. Whenever, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which shall be shown to them by a person appointed by the court for that purpose.

When view
may be had.

SEC. 378. No person shall be suffered to speak to the jury on any subject connected with the trial, and the officer shall return them into court without unnecessary delay, or at a specified time.

No person
allowed to
speak to jury

SEC. 379. If a juror have any personal knowledge respecting a fact in controversy in the case, he must declare the same in open court, during the trial. If, during the retirement of the jury, a juror declare any fact which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

Juror must
disclose
knowledge
of contro-
versy in
court.

Must be
witness.

SEC. 380. The jury sworn to try an indictment for a misdemeanor may, at any time during the trial, in the discretion of the court, be allowed to separate. In all cases, on the trial of an indictment for felony, the jurors sworn shall be kept together until they are finally discharged by the court from further consideration of the cause. At each adjournment or recess of the court, which may occur during the trial, the sheriff, or his deputy, shall keep the jury together in his charge, and it shall be the duty of the sheriff, at the expense of the county, to provide a suitable place for the board and lodging of the jury. The court, at each recess or adjournment during the trial, shall administer to the sheriff, or his deputy, the following oath:

Jury, how
to be kept.

"You do solemnly swear that you will, during this recess or adjournment (as the case may be), keep this jury together, and that you will return them into court at the opening thereof, and that in the meantime you will not allow any person to speak to them, or either of them, nor speak to them, or either of them, yourself, on the subject of the case now on trial; so help you God."

Same.

SEC. 381. The jury shall also, at each adjournment of the court, whether they be permitted to separate or be kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves, or with any one else, on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

To be ad-
monished
on each ad-
journment.

SEC. 382. If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the court

Juror, sick.

may order him to be discharged. In that case, a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impaneled.

Court to decide questions of law.

SEC. 383. The court shall decide all questions of law which shall arise in the course of the trial.

Law and fact on trial of indictment.

SEC. 384. On the trial of an indictment for libel, the jury shall have the right to determine the law and the fact.

Jury to receive law as laid down by court.

SEC. 385. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant to except questions of fact by the jury. And, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

Charge to jury.

SEC. 386. In charging the jury, the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict.

Same.

SEC. 387. Either party may present to the court any written charge, and request that it may be given. If the court think it correct and pertinent, it shall be given, if not, it shall be refused.

Same.

SEC. 388. Upon each charge so presented, and given, or refused, the court shall indorse its decision, and shall sign it. If part be given and part refused, the court shall distinguish, showing by the indorsement what part of the charge was given and what part refused.

How jury to decide after charge.

SEC. 389. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not permit any person to speak to them, nor to speak to them themselves, unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed.

Defendant on bail may be committed.

SEC. 390. Where a defendant having given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county to abide the judgment or further order of the court, and he shall be committed and held in custody accordingly.

Room to be provided.

SEC. 391. A room shall be provided by the sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery, unless the same have been already furnished by the county. The court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

Provision for jury while deliberating.

SEC. 392. While the jury are kept together, either during the progress of the trial, or after their retirement for delibera-

tion, they shall be provided by the sheriff, at the expense of the county, with suitable and sufficient food and lodging.

SEC. 393. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the case, or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession, and also the instructions of the court.

Papers
which they
may take.

SEC. 394. The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

Same.

SEC. 395. After the jury have retired for deliberation, if there be any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the district attorney, and the defendant or his counsel.

Jury may be
brought into
court for in-
structions.

SEC. 396. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

When jury
may be dis-
charged after
returning.

SEC. 397. Except as provided in the last section, the jury shall not be discharged after the cause is submitted to them, until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless, at the expiration of such time as the court shall deem proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

Same.

SEC. 398. In all cases where a jury are discharged or prevented from giving a verdict by reason of any accident, or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

Effect of dis-
charge with-
out verdict.

SEC. 399. While the jury are absent, the court may adjourn, from time to time, as to other business, but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

Adjournm't
during ab-
sence of jury

SEC. 400. A final adjournment of the court discharges the jury.

Final ad-
journment
discharges.

SEC. 401. When two or more counties are joined for judicial purposes, the expenses accruing from the trial of cases shall be assigned to the county in which the offense was committed for which trial was had.

Expenses of
two or more
counties for
judicial
purposes.

SEC. 402. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them

Verdict, how
delivered.

in charge. Their names must then be called, and if all do not appear, the rest shall be discharged without giving a verdict. In such a case the cause may be again tried at the same or another term.

When de-
fendant
must appear.

SEC. 403. If the indictment be for a felony, the defendant must, before the verdict, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

Jury to be
asked if they
agreed.

SEC. 404. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon verdict, and if the foreman answer in the affirmative, they shall, on being required, declare the same.

General or
special
verdict.

SEC. 405. The jury may either render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

General
import.

SEC. 406. A general verdict upon a plea of not guilty, is either "guilty" or "not guilty," which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant."

Special.

SEC. 407. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Reduced to
writing.

SEC. 408. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged.

Form of.

SEC. 409. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury.

Judgment
on, how
given.

SEC. 410. The court shall give judgment upon the special verdict, as follows: First. If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted, as provided in section four hundred and twelve, under that indictment, judgment shall be given accordingly. But if the facts found do not prove the defendant guilty of the offense charged, or of any offense of which he could be so convicted, under the indictment, judgment of acquittal shall be given. Second. If the plea be a former conviction or acquittal of the same offense, the court shall give judgment of acquittal or conviction, according as the facts prove or fail to prove the former conviction or acquittal.

New trial
when order'd

SEC. 411. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of facts from the evi-

dence as established to their satisfaction, the court shall order a new trial.

SEC. 412. In all cases the defendant may be found guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense charged.

Defendant
may be found
guilty of any
offense.

SEC. 413. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the case as to the rest may be tried by another jury.

Verdict may
be rendered
as to some
defendants.

SEC. 414. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after such reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

Verdict,
when to be
reconsidered

SEC. 415. If the jury render a verdict which is neither a general nor a special verdict, as defined in sections four hundred and six and four hundred and seven, the court may direct them to reconsider it, and it shall not be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

Same.

SEC. 416. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it shall be entered in the terms in which it is found, and the court shall give judgment of acquittal. But no judgment of conviction can be given unless the jury find expressly against the defendant upon the issue, or judgment be given against him on a special verdict.

Persistence
of jury in
informality
to work
acquittal.

SEC. 417. When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party, in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative the jury shall be sent out for further deliberation.

Jury may
be polled

SEC. 418. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full on the minutes, and must read it to the jury and inquire of them whether it be their verdict. If any juror disagree, the fact must be entered in the minutes and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

Recording.

SEC. 419. If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the verdict is given, except that where the acquittal is for a variance between the

Proceedings
on verdict
of acquittal.

proof and the indictment, which may be obviated by a new indictment, the court may order his detention, to the end that a new indictment may be preferred in the same manner and with like effect as provided in sections three hundred and seventy-four and three hundred and seventy-five.

Of guilty,
proceedings.

SEC. 420. If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded, if in custody, or if on bail, he may be committed to the proper officers of the county, to await the judgment of the court upon the verdict. If so committed, his bail shall be exonerated, or if money be deposited instead of bail, it shall be refunded to the defendant.

7. *Proceedings after Trial and before Judgment.*

Bill of ex-
ceptions by
defendant.

SEC. 421. On the trial of an indictment, exceptions may be taken by the defendant to a decision of the court upon a matter of law in any of the following cases: First. In disallowing a challenge to the panel of the jury, or to an individual juror, for implied bias. Second. In admitting or rejecting witnesses or testimony, or in charging the triers of a challenge to a juror for actual bias. Third. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

Same on
behalf of
people.

SEC. 422. The exceptions may be taken by the district attorney or other counsel for the people to a decision of the court upon a matter of law in any of the cases specified in the third subdivision of the preceding section.

When and
how settled.

SEC. 423. A bill containing the exceptions must be settled and signed by the judge, and filed with the clerk within ten days after the trial of the cause, unless further time be granted by said judge or by a judge of the supreme court.

What to
contain.

SEC. 424. The bill of exceptions shall contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken, and the judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material to the questions to be raised.

When to be
filed.

SEC. 425. The bill of exceptions must be filed with the clerk of the court as soon as it is signed by the judge.

Written
charges to
form part
of record.

SEC. 426. When any written charge has been presented and given, or refused, the question or questions presented in such charge need not be excepted to, nor embodied in a bill of exceptions, but the written charge itself, with the indorsement showing the action of the court, shall form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal in like manner as if presented in a bill of exceptions.

New trial,
effect of.

SEC. 427. A new trial is a re-examination of the issue in the same court before another jury, after a verdict has been

given. It places the parties in the same condition as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument.

SEC. 428. The court in which a new trial is had upon the issue of fact, has power to grant a new trial where a verdict has been rendered against the defendant, upon his application, in the following cases only: First. When the trial has been had in his absence, if the indictment be for felony. Second. When the jury has received any evidence out of court other than that resulting from a view as provided in section three hundred and seventy-seven. Third. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. Fourth. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. Fifth. When the court has misdirected the jury in a matter of law. Sixth. When the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone.

When may
be granted.

SEC. 429. The application for a new trial must be made before the judgment is entered in the cause.

When appli-
cation for,
to be made.

SEC. 430. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section two hundred and eighty-six.

Motion in
arrest of
judgment.

On what
founded.

SEC. 431. The court may also, on its own view of any of these defects, arrest the judgment without motion.

Judgment
arrested.

SEC. 432. The motion must be made before or at the time when the defendant is called for judgment.

When mo-
tion made.

SEC. 433. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Effect of
allowing
motion.

SEC. 434. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be recommitted to the officers of the proper county, or admitted to bail anew to answer the new indictment. If the evidence show him guilty of another offense, he shall be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appear sufficient to charge him with any offense, he shall, if in custody, be discharged; or, if admitted to bail, his bail shall be exonerated; or, if money have been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

Proceedings
after judg-
ment has
been arrest'd

8. *Judgment and Execution.*Time for
pronouncing

SEC. 435. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court shall appoint a time for pronouncing judgment.

What time
to be ap-
pointed.

SEC. 436. The time appointed shall be at least two days after the verdict, if the court intend to remain in session so long; or, if not, as remote a time as can reasonably be allowed. But in no case shall the judgment be rendered in less than six hours after the verdict.

Presence of
defendant
when
necessary.

SEC. 437. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for misdemeanor, judgment may be pronounced in his absence.

Defendant to
be brought
into court.

SEC. 438. When the defendant is convicted of a felony, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it for judgment, and the officer shall do so accordingly.

Defendant
out on bail
failing to
appear.

SEC. 439. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

Bench
warrant.Warrant
may be
issued into
several
counties.

SEC. 440. The clerk, on the application of the district attorney, may, accordingly, at any time after the order, whether the court be sitting or not, issue a bench-warrant into one or more counties.

SEC. 441. The bench-warrant shall be substantially in the following form:

"COUNTY OF _____

Form of.

The people of the United States of the territory of Nevada, to any sheriff, constable, marshal, or policeman in this territory. A. B. having been on the _____ day of _____, A. D. 18—, duly convicted in the district court of the district of _____, of the crime of [designating it generally]. You are therefore commanded forthwith to arrest the above named A. B. and bring him before that court for judgment, or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of _____.

Given under my hand, with the seal of said court affixed, this the _____ day of _____, A. D. 18—. [Seal.]

By order of the court, E. F., Clerk."

How served.

SEC. 442. The bench-warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county, it need not be indorsed by a magistrate of that county.

SEC. 443. Whether the bench-warrant be served in the county in which it was issued, or in another county, the officer shall arrest the defendant, and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

Arrest of
defendant.

SEC. 444. When the defendant appears for judgment, he shall be informed by the court, or by the clerk under its direction, of the nature of the indictment, and of his plea, and the verdict, if any there are, and shall be asked whether he have any legal cause to show why judgment should not be pronounced against him.

Proceedings
when de-
fendant
appears.

SEC. 445. He may show for cause against the judgment—
First. That he is insane; and if in the opinion of the court there be reasonable grounds for believing him to be insane, the question of his insanity shall be tried, as provided in sections five hundred and seventy-two to five hundred and seventy-five, both inclusive. If upon the trial of that question the jury find that he is of sound mind, judgment shall be pronounced; but, if they find him insane, he shall be committed to the custody of some proper and suitable person, until he become sane, and when notice is given of that fact, as provided in section five hundred and seventy-nine, he shall be brought before the court for judgment. Second. That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

Causes
against
judgment.

SEC. 446. If no sufficient cause be alleged, or appear to the court why judgment should not be pronounced, it shall thereupon be rendered.

Rendition of
judgment.

SEC. 447. If the defendant have been convicted of two or more offenses before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

Judgment,
where de-
fendant
found guilty
of two or
more offenses.

SEC. 448. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every two dollars of the fine, or in that proportion.

Judgment
to pay fine
may order
imprisonm't.

SEC. 449. A judgment that the defendant shall pay a fine, shall constitute a lien in like manner as a judgment for money rendered in a civil action.

Lien of such
judgment.

SEC. 450. When judgment upon a conviction is rendered, the clerk shall enter the same in the minutes, stating briefly the offense for which the conviction has been had, and shall, within five days, annex together and file the following papers, which shall constitute the record of the action: First. A copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the grand jury, or to any individual grand juror, and the proceedings thereon. Sec-

Entry of
judgment.

Record, how
constituted.

ond. The indictment, and a copy of the minutes of the plea of, or demurrer. Third. A copy of the minutes of any challenge which may have interposed to the panel of the trial jury, or to an individual juror, and the proceedings thereon. Fourth. A copy of the minutes of the trial. Fifth. A copy of the minutes of the judgment. Sixth. The bill of exceptions, if there be one. Seventh. The written charges asked of the court, if there be any.

Authority for execution SEC. 451. When a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof, except when judgment of death is rendered.

Execution on judgment for fine. SEC. 452. If the judgment be for a fine alone, execution may be issued thereon as on a judgment in a civil action.

On judgment for imprisonment. SEC. 453. If the judgment be imprisonment, or a fine and imprisonment until it be satisfied, the defendant shall forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.

On judgment of death. SEC. 454. When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk, under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day on which the judgment shall be executed, which shall not be more than sixty days from the time of the judgment.

Statement to be transmitted to governor. SEC. 455. The judge of the court at which a conviction requiring judgment of death shall have been had, shall immediately after the conviction transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Governor may require opinion of supreme court. SEC. 456. The governor may thereupon require the opinion of the justices of the supreme court and the attorney general, or any of them, upon the statement so furnished.

Suspension of judgment of death. SEC. 457. No judge, court, or officer other than the governor, can suspend the execution of a judgment of death, except the sheriff, as provided in the seven succeeding sections, unless an appeal be taken. When an appeal has been taken from a judgment of death, the appellate court, and any judge thereof in vacation, may suspend the execution until the appeal is heard and determined.

Inquiry into sanity of defendant. SEC. 458. If after judgment of death there be good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the district attorney.

Same. SEC. 459. The district attorney shall attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to

attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by that court.

SEC. 460. A certificate of the inquisition shall be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had. Certificate of inquisition.

SEC. 461. If it be found by the inquisition that the defendant is sane, the sheriff shall execute the judgment; but if it be found that he is insane, the sheriff shall suspend the execution of the judgment until he receive a warrant from the governor, or from the judge of the court by which the judgment was rendered, directing the execution of the judgment. Proceedings on such inquiry.

SEC. 462. If the inquisition find that the defendant is insane, the sheriff shall immediately transmit the same to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment. Effect of finding.

SEC. 463. If there be good reason to suppose that a female, against whom a judgment of death is rendered, is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy; immediate notice thereof shall be given to the district attorney, and the provisions of sections four hundred and fifty-nine and four hundred and sixty shall govern the proceedings upon the inquisition. Inquiry into pregnancy of female convict.

SEC. 464. If it be found by the inquisition that such female is not pregnant, the sheriff shall execute the judgment. If it be found that she is pregnant, the sheriff shall suspend the execution of the judgment, and transmit the inquisition to the governor. Effect of finding.

SEC. 465. When the governor is satisfied that such female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment. Same.

SEC. 466. If for any reason a judgment of death shall not have been executed, and the same remain in force, the court in which the conviction was had, on the application of the district attorney, shall order the defendant to be brought before it, or if he be at large, a warrant for his apprehension may be issued. Proceedings when judgment not executed.

SEC. 467. Upon the defendant being brought before the court, it shall inquire into the facts, and if no legal reason exist against the execution of the judgment, shall make an order to the sheriff of the proper county [to] execute the judgment at the time specified therein, and the sheriff shall execute the judgment accordingly.

SEC. 468. The punishment of death shall be inflicted by hanging the defendant by the neck until he be dead. Death penalty, how inflicted.

9. *Appeal.*

SEC. 469. The party aggrieved in a criminal action, whether that party be the people or the defendant, may appeal as fol- To and from what courts.

laws: First. To the probate court of the county, from a final judgment of a justice's court. Second. To the supreme court, from a final judgment of the district court in all criminal cases. Also, from an order of the district court allowing a demurrer granting or refusing a new trial.

On questions
of law alone.

SEC. 470. The appeal to the supreme court from the district court, can be taken in questions of law alone.

Parties on,
designated.

SEC. 471. The party appealing shall be known as the appellant, and the adverse party as the respondent.

What may
be reviewed.

SEC. 472. Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.

Time.

SEC. 473. An appeal must be taken within one year after the judgment was rendered.

How taken.

SEC. 474. An appeal must be taken by the service of a notice in writing on the clerk of the court in which the action was tried, stating that appellant appeals from the judgment.

SEC. 475. If the appeal be taken by the defendant, a similar notice must be served on the district attorney.

SEC. 476. If it be taken by the people, a similar notice must be served upon the defendant, if he be a resident of the district; or if not, on the counsel, if any, who appear for him on trial, if he be living within the district. If such service, after due diligence, cannot be made, the appellate court upon proof thereof, shall make an order for the publication of the notice in some newspaper, and for such time, as it may deem proper.

When
deemed
perfect.

SEC. 477. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected.

Effect of
appeal.

SEC. 478. An appeal taken by the people shall in no case stay or affect the operation of a judgment in favor of the defendant.

Same.

SEC. 479. No appeal from a judgment of conviction, unless it be one imposing a fine only, shall stay the execution of the judgment, but the defendant, if in custody, shall remain in custody to abide the judgment upon the appeal, unless admitted to bail, as prescribed in section five hundred and two.

Copy of
record trans-
mitted to
supreme
court.

SEC. 480. Upon the appeal being taken, the clerk with whom the notice of appeal is filed, must within ten days thereafter, without charge, transmit to the clerk of the supreme court a copy of the notice of appeal and of the record.

Dismissing
appeal.

SEC. 481. If the appeal be irregular in any substantial particular, but not otherwise, the appellate court may, on any day in term, on motion of the respondent, upon five days' notice, with copies of the papers upon which the motion is founded, order the same to be dismissed.

Same.

SEC. 482. The court may, also, upon like motion, dismiss the appeal, if the return be not made as provided in section

four hundred and eighty, unless for good cause it enlarge the time for that purpose.

SEC. 483. All appeals in criminal cases shall be tried and determined at the first term of the appellate court after the record is filed. Argument of

SEC. 484. Judgment of affirmance may be granted without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondent fail to appear. Same.

SEC. 485. Upon the argument of the appeal, if the offense be punishable with death, two counsel shall be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side. Same.

SEC. 486. The defendant need not appear in the appellate court. Appellate court.

SEC. 487. After hearing the appeal, the court shall give judgment without regard to technical error or defect, which do not affect the substantial rights of the parties. Technical errors not to affect.

SEC. 488. The appellate court may reverse, affirm or modify the judgment appealed from, and may, if necessary or proper, order a new trial. Extent of judgment.

SEC. 489. When a new trial is ordered, it must be directed to be had in the court of the district from which the appeal was taken. New trial, when had.

SEC. 490. If a judgment against the defendant be reversed, without ordering a new trial, the appellate court shall direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant. Proceedings on reversal of judgment.

SEC. 491. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the appellate court shall direct. On affirmance.

SEC. 492. When the judgment of the appellate court is given, it shall be entered in the minutes, and a certified copy of the entry shall be forthwith remitted to the clerk of the court from which the appeal was taken. Entry of judgment and copy.

SEC. 493. The papers returned to the appellate court shall there remain of record, and shall not be remitted to the court below. Papers to remain in appellate court.

SEC. 494. After the certificate of judgment has been remitted, as provided in section four hundred and ninety-two, the appellate court shall have no further jurisdiction of the appeal, or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted. All further proceedings to be had in court below.

10. *Bail.*

SEC. 495. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon the taking of bail. Bail defined.

Taking. SEC. 496. The taking of bail consists in the acceptance by a competent court or magistrate, of the recognizance of sufficient bail for the appearance of the defendant, according to the terms of the recognizance, or that the bail will pay to the people of the United States of the territory of Nevada a specified sum.

Admission to SEC. 497. A person charged with an offense may be admitted to bail before conviction, as follows: First. As a matter of discretion in all cases where the punishment is death. Second. As a matter of right in all other cases.

When not admitted to. SEC. 498. No person shall be admitted to bail where he is charged with an offense punishable with death, when the proof is evident or the presumption great.

In discretion, notice necessary. SEC. 499. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable to be given to the district attorney of the county where the examination is had.

After conviction, when allowed. SEC. 500. After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail—First. As a matter of right, where the appeal is from a judgment imposing a fine only. Second. As a matter of discretion in all other cases.

Before conviction. SEC. 501. Before conviction, a defendant may be admitted to bail—First. For his appearance before a magistrate, on the examination of the charge, before being held to answer. Second. To appear at the court to which the magistrate is required, by section one hundred and seventy three, to return the depositions and statement upon the defendant being held to answer after examination. Third. After indictment, either before the bench-warrant issued for his arrest, or upon an order of the court committing or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

On appeal. SEC. 502. After conviction, and upon an appeal, the defendant may be admitted to bail as follows: First. If the appeal be from a judgment imposing a fine only, or the recognizance of bail, that he will pay the same, or such part of it as the appellate court may direct, if the judgment be affirmed or modified, or the appeal be dismissed. Second. If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

Held to answer, who may admit to. SEC. 503. When the defendant has been held to answer, as provided in section one hundred and sixty-one, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of *habeas corpus*.

How put in. SEC. 504. Bail is put in by a written recognizance, exe-

cuted by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate in substantially the following form: "An order having been made on the _____ day of _____, A. D. 18—, by A. B., a justice of the peace of _____ county (or as the case may be), that C. D. be held to answer upon a charge of [stating briefly the nature of the offense] upon which he has been duly admitted to bail in the sum of _____ dollars; we, E. F. and G. H. [stating their place of residence], hereby undertake that the above named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall, at all times, render himself amenable to the orders and process of the court, and, if convicted, shall appear for judgment and render himself in execution thereof, or, if he fail to perform either of these conditions, that we will pay to the people of the United States in the territory of Nevada, the sum of _____ dollars [inserting the sum in which the defendant is admitted to bail]."

Recognizance, form of.

SEC. 505. The qualifications of bail are as follows: First. Each of them must be a resident, and a householder or freeholder within the territory; but the court or magistrate may refuse to accept any person as a bail who is not a resident of the district where the bail is offered. Second. They must each be worth the amount specified in the recognizance, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

Qualifications of.

SEC. 506. The bail shall, in all cases, justify by affidavit, taken before the court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in section five hundred and five.

Justification of.

SEC. 507. The court or magistrate may thereupon further examine the bail, upon oath, concerning their sufficiency, in such manner as the court or magistrate may deem proper.

Same.

SEC. 508. When the offense charged in the indictment is not capital, the officer serving the bench-warrant shall, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail, as prescribed in sections two hundred and sixty-two and two hundred and sixty-five.

On indictment before conviction.

SEC. 509. If the offense charged in this indictment be capital, the officer arresting the defendant shall deliver him into custody, according to the command of the bench-warrant, as prescribed in section two hundred and sixty.

When delivered into custody.

SEC. 510. When the defendant is so delivered into custody, he shall be held by the sheriff, unless admitted to bail on examination, upon a writ of *habeas corpus*.

To be held by sheriff.

SEC. 511. The bail must be put in by a written recogni-

Bail, how
put in.

zance, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form :

Recogni-
zance, form
of.

"An indictment having been found, on the — day of —, A. D. eighteen hundred and —, in the court of the district of — (as the case may be), charging A B with the crime of [designating it generally], and he having been duly admitted to bail in the sum of — dollars, we, C D and E F [stating their place of residence], hereby undertake that the above named A B shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the court, and if convicted, shall appear for judgment and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the people of the United States and territory of Nevada, the sum of — dollars [inserting the sum in which the defendant is admitted to bail]."

Qualifica-
tions and
justifications
of.

SEC. 512. The provisions contained in sections five hundred and five and five hundred and seven, both inclusive, in relation to bail, shall apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail and incident thereto.

Bail on ap-
peal, order
for.

SEC. 513. In the cases in which the defendant may be admitted to bail, upon an appeal, as provided in section five hundred, the order admitting him to bail may be made by any magistrate having the power to issue a writ of *habeas corpus*.

Notice of ap-
plication for.

SEC. 514. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered shall require such notice of the application therefor, as he may deem reasonable, to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

Qualifica-
tions and
recognizance

SEC. 515. The bail must possess the qualifications, and must be put in all respects as above provided, except that the condition of the recognizance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate court upon the appeal.

Deposit in
lieu of bail.

SEC. 516. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he shall be discharged from custody.

May deposit
in exonera-
tion of bail.

SEC. 517. If the defendant have given bail, he may, at any time before the forfeiture of the recognizance, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made, the bail shall be exonerated.

How deposit
applied.

SEC. 518. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine,

the clerk shall, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

SEC. 519. At any time before the forfeiture of their recognizance, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed, at the time of giving bail, in the following manner.

How bail may surrender defendant and be exonerated.

SEC. 520. A certified copy of the recognizance of bail shall be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and shall, by a certificate in writing, acknowledge the surrender. Second. Upon a recognizance and a certificate of the officer, the court in which the action is pending may, upon notice of five days to the district attorney of the district, with a copy of the recognizance and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they shall be exonerated accordingly.

Same.

SEC. 521. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the territory, may themselves arrest him, or by a written authority, indorsed on a certified copy of the recognizance, may empower any person of suitable age and discretion to do so.

Bail may arrest defendant.

SEC. 522. If money have been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court shall order a return of the deposit to the defendant, upon producing the certificate to the officer, showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

Surrender after deposit.

SEC. 523. If without sufficient excuse the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion, when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court shall direct the fact to be entered upon its minutes, and the recognizance, or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.

When recognizance or deposit forfeited.

SEC. 524. If at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the recognizance or the deposit to be discharged upon such terms as may be just.

Discharge of forfeiture.

SEC. 525. If the forfeiture be not discharged as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed by action only against the bail upon their recognizance.

Action on recognizance

SEC. 526. If by reason of the neglect of the defendant to appear, as provided in section five hundred and twenty-three, money deposited instead of bail is forfeited, and the forfeiture

Payment of deposit to county treasurer.

be not discharged or remitted, as provided in section five hundred and twenty-four, the clerk with whom it is deposited shall immediately after the final adjournment of the court pay over the money deposited to the county treasurer.

When defendant may be recommitted after bail.

SEC. 527. The court to which the committing magistrate shall return the depositions and statement, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered on its minutes, direct the arrest of the defendant, and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases: First. When by reason of his failure to appear he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section five hundred and twenty-three. Second. When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the territory. Third. Upon an indictment being found in the cases provided in section two hundred and sixty-six.

Order for recommitment, what to contain.

SEC. 528. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal, or policeman, within this territory, and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged.

Arrest on such order.

SEC. 529. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county in the same manner as upon a warrant of arrest, except that when arrested in another county, the order need not be indorsed by a magistrate of that county.

Same.

SEC. 530. If the order recite, as the grounds upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

Amount of bail to be specified.

SEC. 531. If the order be made for any other cause, and the offense be bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum affixed, which shall be specified in the order.

Who may take bail in such case.

SEC. 532. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit the bail upon the holding of the defendant to answer before indictment, as prescribed in section five hundred and three, or by any other magistrate to be designated by the court.

Form of recognizance on complaint

SEC. 533. When bail is taken upon the recommitment of the defendant, the recognizance shall be in substantially the following form: "An order having been made on the —"

day of —, A. D. 18—, by the court [naming it], that A. B. be admitted to bail in the sum of — dollars, in an action pending in that court against him in behalf of the people of the United States of the territory of Nevada, upon an [information, presentment, indictment, or appeal, as the case may be], we, C. D. and E. F., of [stating their place of residence], hereby undertake that the above named A. B. shall appear in that or any other court in which his appearance may be lawfully required upon that [information, presentment, indictment, or appeal, as the case may be], and shall at all times render himself amenable to its orders and processes, and appear for judgment, and surrender himself in execution thereof, or if he fail to perform either of these conditions, that he will pay to the people of the United States and the territory of Nevada the sum of — dollars [inserting the sum in which the defendant is admitted to bail].”

SEC. 534. The bail must possess the qualifications, and must be put in all respects in the manner heretofore prescribed. Qualifications of bail.

V.—MISCELLANEOUS PROCEEDINGS.

1. *Compelling Witnesses to Attend.*

SEC. 535. The process by which the attendance of a witness before a court or magistrate is required is a subpoena. Subpena.

SEC. 536. A magistrate before whom an information is laid may issue subpoenas, subscribed by him, for witnesses within the territory, either on behalf of the people or of the defendant. Who may issue.

SEC. 537. The district attorney may issue subpoenas, subscribed by him, for witnesses within the territory, in support of the prosecution, or for such other witnesses as the grand jury may direct to appear before the grand jury, upon any investigation pending before them. Same.

SEC. 538. The district attorney may, in like manner, issue subpoenas subscribed by him, for witnesses within the territory, in support of an indictment to appear before the court at which it is to be tried. Same.

SEC. 539. The clerk of the court at which an indictment is to be tried, shall, at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses within the territory, as may be required by the defendant. Same.

SEC. 540. A subpoena authorized by the last four sections, shall be substantially in the following form: The people of the United States of the territory of Nevada, to A. B. You are commanded to appear before C. D., a justice of the peace of — township, in — county, (or, the court of — as the case may be,) at [naming the place] on [stating the day and hour] as a witness in a criminal action, prosecuted by the people of the United States of the territory of Nevada, against E. F. Given under my hand this — day of —, A. D. 18—. Form of.

G. H., justice of the peace, (or J. B., district attorney, or "by order of the court, L. M., clerk," as the case may be).

Duces tecum. SEC. 541. If books, papers, or documents be required, a direction to the following effect shall be contained in the subpoena: And you are required also to bring with you the following [describing intelligibly the books, papers, or documents required].

How served. SEC. 542. A peace officer must serve within his county or district any subpoena delivered to him for service, either on the part of the people, or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service, without delay.

Same. SEC. 543. The service of a subpoena shall be by showing the original to the witness personally, and informing him of the contents.

Payment of witnesses. SEC. 544. When a person shall attend before a magistrate, grand jury, or court, as a witness on behalf of the people, upon a subpoena, or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial by an order upon its minutes, or in any other case, the district or probate judge, by an order subscribed by him, may direct the treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses.

Same. SEC. 545. Upon the production of the order, or a certified copy thereof, the county treasurer shall pay the witness the sum specified therein out of the county treasury.

Attendance of witnesses out of county SEC. 546. No person shall be obliged to attend as a witness before any court or judge out of the district where the witness resides, or is served with the subpoena, unless a judge of the court in which the offense is triable, or a justice of the supreme court, or a probate judge, upon an affidavit of the district attorney, or prosecutor, or of the defendant, or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse on the subpoena an order for the attendance of the witness.

Disobedience to subpoena, etc. SEC. 547. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, may be punished by the court or magistrate as a contempt.

Recognizance, how forfeited. SEC. 548. Where a witness has entered into a recognizance to appear, as provided in section one hundred and sixty-seven, upon his failure so to do, his recognizance shall be forfeited, in the same manner as recognizances of bail.

Disobedience of subpoena issued by defendant. SEC. 549. A witness disobeying a subpoena issued on the part of a defendant, shall also forfeit to the defendant the sum of one hundred dollars, which may be recovered in a civil action, unless good cause can be shown for his non-attendance.

2. *Testimony taken by Commission.*

SEC. 550. When a defendant has been held to answer a charge for a public offense, he may, either before or after indictment, have witnesses examined on his behalf, as prescribed in this act, and not otherwise.

Defendant's
witnesses
examined
before or
after indict-
ment.

SEC. 551. When a material witness for the defendant is about to leave the territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally on a commission.

When such
examination
had.

SEC. 552. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath, on interrogations annexed thereto, to take and certify the deposition of the witness, and return it according to the directions given in the commission.

Commission
denied.

SEC. 553. The commissioner shall be either a district judge, probate judge, county clerk, or notary public of the district to which the commission is issued.

Who may be
commissioner

SEC. 554. The application must be made upon affidavit, showing—First. The nature of the offense charged. Second. The state of the proceedings in the action. Third. The name of the witness, and that his testimony is material to the defense of the action. Fourth. That the witness is about to leave the territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

Application
for commis-
sion, what
to show.

SEC. 555. The application may be made to the court during the term, or to the judge in vacation, and must be upon three days' notice to the district attorney.

When and to
whom made.

SEC. 556. If the court or judge to whom the application is made, be satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony.

Order for
commission,
when to be
granted.

SEC. 557. If the application for a commission be granted, the court or judge may insert in the order therefor a direction that the trial of the indictment be stayed for a specified time reasonably sufficient for the execution and return of the commission.

Stay of pro-
ceedings.

SEC. 558. When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge.

Notice and
interrogato-
ries served
on district
attorney.

SEC. 559. The district attorney may, in like manner, serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with like notice.

Cross-inter-
rogatories.

SEC. 560. In the interrogatories, either party may insert any question pertinent to the issue.

What may
be inserted.

Allowance of
interroga-
tories.

SEC. 561. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge shall modify the questions so as to conform them to the rules of evidence, and shall indorse upon them his allowance, and annex them to the commission.

Direction to
execute com-
mission.

SEC. 562. Unless the parties otherwise consent by an indorsement on the commission, the court or judge shall indorse thereon a direction as to the manner in which it shall be returned, and may, in his discretion, direct that it be returned by mail, or otherwise, addressed to the clerk of the court in which the action is pending.

Commission,
how exe-
cuted.

SEC. 563. The commissioner, unless otherwise specially directed, may execute the commission as follows: First. He shall publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth. Second. He shall cause the examination of the witness to be reduced to writing. Third. He shall write the answers of the witness as near as possible in the language he gives them, and shall read to them each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth. Fourth. If the witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated. Fifth. If any papers or documents are produced before him and proved by the witness, they shall be annexed to his deposition and be subscribed by the witness, and certified by the commissioner. Sixth. The commissioner shall subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness to the commission, and must close up under seal, and address the same as directed on the commission. Seventh. If there be a direction on the commission to return it by mail, the commissioner shall immediately deposit it in the nearest post office. If any other direction be made by the written consent of the parties, or by the court or judge on the commission as to its return, he must comply with the direction.

What to be
annexed.

SEC. 564. A copy of the last section must be annexed to the commission.

Return of
commission.

SEC. 565. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hand of the commissioner, and that it has not been opened or altered since he received it.

Same.

SEC. 566. If the agent be dead, or from sickness or other casualty unable personally to deliver the commission and return as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is

dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hand of the commissioner.

SEC. 567. The clerk or judge receiving and opening the commission and return, must immediately file it with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

Filing commission and return.

SEC. 568. If the commission and return be transmitted by mail, the clerk to whom it is addressed must receive it from the post office, and open and file it in his office, where it shall remain, unless the court otherwise direct.

Return by mail.

SEC. 569. The commission and return shall be at all times open to the inspection of the parties, who shall be furnished by the clerk with copies of the same, or of such part thereof as they may require, on payment of his fees.

Commission and return open for inspection.

SEC. 570. The depositions taken under the commission may be read in evidence by defendant on the trial, upon it being shown that the witness is unable to attend from any cause whatever, and the same objections may be taken to any questions in the interrogatories, or to any answer in the deposition, as if the witness had been examined orally in court.

Depositions evidence for either party.

3. *Inquiry into the Insanity of the Defendant before Trial or after Conviction.*

SEC. 571. An act done by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment, or punished, for a public offense, while he is insane.

Insanity excuses crime.

SEC. 572. When an indictment is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt shall arise as to the sanity of the defendant, the court shall order the question to be submitted to the regular jury, or may order a jury to be summoned as prescribed in section three hundred and thirty-four, to inquire into the fact.

Inquiry into defendant's sanity.

SEC. 573. The trial of the indictment, or the pronouncing of the judgment, as the case may be, shall be suspended until the question of insanity shall be determined by the verdict of the jury.

Trial or judgment suspended.

SEC. 574. The trial of the question of insanity shall proceed in the following order: First. The counsel for the defendant shall open the case and offer evidence in support of the allegation of insanity. Second. The counsel for the people shall open their case and offer evidence in support thereof. Third. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause. Fourth. When the evidence is concluded, unless the case is

Insanity, how tried.

submitted to the jury, on either or both sides, without argument, the counsel for the people must commence, and the defendant, or his counsel, may conclude the argument to the jury. Fifth. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side. Sixth. The court shall then charge the jury, if requested by either party.

Charge to jury.

SEC. 575. The provisions of section three hundred and eighty-six, in respect to the charge of the court to the jury upon the trial of an indictment, shall apply to the trial of the question of insanity.

Defendant found sane, proceedings.

SEC. 576. If the jury find that the defendant is sane, the trial of the indictment shall proceed, or judgment may be pronounced, as the case may be.

Found insane, proceedings.

SEC. 577. If the jury find that the defendant is insane, the trial or judgment shall be suspended until he become sane, and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the sheriff to the custody of some proper person, and that upon his becoming sane, he be redelivered by such person to the sheriff.

Bail, exonerating.

SEC. 578. The commitment of the defendant, as mentioned in the last section, shall exonerate any bail he may have given, or shall entitle any person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

Returning to sanity, proceedings.

SEC. 579. If the defendant be received by the person so appointed, he must be detained by him until he becomes sane. When he becomes sane, such person shall give notice to the sheriff and district attorney of the county of that fact. The sheriff shall thereupon, without delay, take the defendant from the custody of such person, and place him in proper custody, until he be brought to trial or judgment, as the case may be, or be otherwise legally discharged.

Expense of keeping defendant, to whom chargeable.

SEC. 580. The expenses of placing the defendant in the custody of such proper person, of keeping him and bringing him back, shall in the first instance be chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from any relative, town, city, or county, bound to provide for and maintain him elsewhere.

4. *Dismissal of the Action, before or after Indictment, for Want of Prosecution, or otherwise.*

Prosecution, when dismissed.

SEC. 581. When a person has been held to answer for a public offense, if an indictment be not found against him at the next term of the court at which he is held to answer, the

court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

SEC. 582. If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court, at which the indictment is triable, after the same is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown. Indictment, when dismissed.

SEC. 583. If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own recognizance, or on the recognizance of bail for his appearance to answer the charge at the time to which the action is continued. Continuance of action, and discharge of defendant.

SEC. 584. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail, shall be refunded to him. Dismissal of action.

SEC. 585. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order any action after indictment to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes. Reasons for, to be set forth.

SEC. 586. Neither the attorney-general nor the district attorney shall hereafter discontinue or abandon a prosecution for a public offense, except as provided in the last section. Discontinuance by attorney-general, etc.

SEC. 587. An order for the dismissal of the action, as provided in this act, shall be a bar to another prosecution for the same offense, if it be a misdemeanor, but it shall not be a bar if the offense charged be a felony. Dismissal to bar another prosecution.

5. *Entitling Affidavits.*

SEC. 588. It shall not be necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, or appeal in which it is made. Entitling affidavits.

6. *Errors and Mistakes in Pleadings and other Proceedings.*

SEC. 589. Neither a departure from the form or mode prescribed by this act in respect to any pleadings or proceedings, nor an error or mistake therein, shall render the same invalid, unless it have actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right. Errors, etc., in pleading.

7. *Disposal of Property Stolen or Embezzled.*

SEC. 590. When property alleged to have been stolen or embezzled, shall come into the custody of a peace officer, he Custody of stolen property.

shall hold the same subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Property to
be returned
to the owner

SEC. 591. On satisfactory proof of the title of the owner of the property, the magistrate to whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

Same.

SEC. 592. If the property stolen or embezzled come into the custody of the magistrate, it shall be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Same.

SEC. 593. If the property stolen or embezzled have not been delivered to the owner, the court before which a conviction is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

When prop-
erty is not
claimed.

SEC. 594. If property stolen or embezzled be not claimed by the owner, before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody shall, on payment of the necessary expenses incurred for its preservation, deliver it to the county treasurer, by whom it shall be sold and the proceeds paid into the county treasury.

Property
taken to be
receipted for.

SEC. 595. When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the clerk of the court, to which the deposition and statements must be sent, as provided by section one hundred and seventy-three.

8. *Proceedings in Justices' Courts.*

How com-
menced.

SEC. 596. All proceedings and actions before a justice's court, for a public offense, of which said courts have jurisdiction, shall be commenced by complaint setting forth the offense charged, with such particulars of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

Examinat'n
of complain-
ant.

SEC. 597. When the complaint is laid before the justice, of the commission of a public offense, of which the courts held by them have jurisdiction, he must examine on oath the complainant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

SEC. 598. If the justice be satisfied therefrom that the offense complained of has been committed, he shall issue a warrant of arrest, which shall be substantially in the following form: Warrant of arrest.

"COUNTY OF _____.

"The people of the United States of the territory of Nevada, to any sheriff, constable, marshal, or policeman, in this territory: Complaint upon oath having been this day made before me [justice of the peace, mayor, police judge, or recorder, as the case may be], by C. D., that the offense of [designating it generally], has been committed, and accusing E. F. thereof, you are therefore commanded forthwith to arrest the above named E. F., and bring him before me forthwith at [naming the place]. Form of.

Witness my hand and seal, at _____, this _____ day of _____, A. D. 18—. A. B."

SEC. 599. On being arrested the defendant may plead to the complaint, or he may answer or deny the same. Such plea, answer or denial, may be oral or in writing, and immediately thereafter the case shall be tried, unless, for good cause shown, an adjournment be granted. If an adjournment be granted, the defendant may be held to bail. Pleadings.

SEC. 600. The defendant must in all cases be personally present before the trial shall proceed. Defendant to be present on trial.

SEC. 601. A docket shall be kept by the justice, or by the clerk of the court, if there be one, in which he shall enter each action, and the minutes of the proceedings of the court therein. Docket, how kept.

SEC. 602. The defendant shall be entitled, if demanded by him, to a jury trial. The formation of the juries is provided for by special statute. Jury trial.

SEC. 603. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as may be taken on the trial of an indictment for a misdemeanor; but the challenge shall in all cases be tried by the court. Challenge to jurors.

SEC. 604. The court shall administer to the jury the following oath or affirmation: "You do swear (or affirm, as the case may be), that you will well and truly try this issue between the people of the United States of the territory of Nevada and A. B., the defendant, and a true verdict give according to the evidence." Oath to jurors.

SEC. 605. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant. Jury to hear proof in public.

SEC. 606. The court shall decide all questions of law which may arise in the course of the trial, but shall give no charge with respect to matters of fact. Court to decide questions of law.

SEC. 607. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together, in some private and convenient place; that you will Deliberation of jury.

not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed."

Verdict to
be general.

SEC. 608. The verdict of the jury shall, in all cases, be general.

Same.

SEC. 609. When the jury have agreed upon their verdict, they shall deliver it publicly to the court, who shall cause the same to be entered on the minutes.

Against part
of defendants

SEC. 610. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Jury not to
be discharg'd

SEC. 611. The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharge them.

Second trial,
when had.

SEC. 612. If the jury be discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict be rendered.

Judgment.

SEC. 613. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court shall render judgment thereon of fine and imprisonment, or both, as the case may require.

To pay fine
may direct
imprisonm't.

SEC. 614. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be paid or satisfied.

Acquittal.

SEC. 615. When the defendant is acquitted, either by the court or by the jury, he shall be immediately discharged, and if the court certify in the minutes that the prosecution was malicious, or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

Malicious
prosecution.

When judg-
ment against
prosecutor,
etc.

SEC. 616. If the prosecutor do not pay the costs, or give security therefor, as provided in the last section, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

Entry of
verdict.

SEC. 617. When a verdict is rendered it shall be immediately entered upon the minutes.

Rendition of
judgment.

SEC. 618. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court shall appoint a time for rendering judgment, which shall not be more than two days and less than six hours after the verdict is rendered, and shall hold the defendant to bail to appear for judgment, and in default of bail he shall be committed.

SEC. 619. At any time before the judgment is entered, the defendant may move for a new trial, or in arrest of judgment. Motion for new trial, etc

SEC. 620. A new trial can be granted only in the following cases: First. If the trial has been had in his absence. New trial, when granted. Second. When the jury has received any evidence out of court. Third. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. Fourth. When the verdict has been decided by lot, or by any means, other than a fair expression of opinion on the part of all the jurors. Fifth. When there has been error in the decision of the court, given on any question of law arising during the course of the trial. Sixth. When the verdict is contrary to law and evidence; but not more than one new trial shall be granted for this cause alone.

SEC. 621. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had. Arrest of judgment, on what founded.

SEC. 622. If the judgment be not arrested, or a new trial granted, judgment shall be pronounced at the time appointed, and entered in the minutes of the court. Pronouncing judgment.

SEC. 623. If judgment of acquittal be given, or judgment imposing a fine only, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given. Discharge of defendant

SEC. 624. When a judgment of imprisonment is entered, a certified copy thereof shall be delivered to the sheriff, marshal, or other officer, which shall be a sufficient warrant for the execution of the same. Judgment of imprisonment.

SEC. 625. When a judgment is entered imposing a fine, and ordering the defendant to be imprisoned until the fine be paid, he shall be held in custody during the time specified in the judgment, unless the fine be sooner paid. Imprisonm't until payment of fine.

SEC. 626. Upon the payment of the fine the officer shall immediately discharge the defendant, if he be not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county or city treasurer, according as the offense is prosecuted in a justice's court. Application of fine.

SEC. 627. If a fine be imposed and paid before commitment, it shall be applied as prescribed in the preceding section. Same.

SEC. 628. If a defendant be discharged on bail, or has deposited money instead thereof, and fails to appear according to his recognizance, the same shall be forfeited, or the money appropriated in like manner as in the district court. Same.

SEC. 629. In case of failure to appear for judgment, the court shall issue a warrant for the arrest of the defendant, and shall enter judgment whenever the defendant appears, or is brought before it. Proceedings when defendant fails to appear for judgment

VII.—SPECIAL PROCEEDINGS.

1. *Search - Warrant.*

Defined.

SEC. 630. A search-warrant is an order in writing in the name of the people of the United States of the territory of Nevada, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, or implements used, or evidences of crime, and bring it before the magistrate.

When to be issued.

SEC. 631. It may be issued, whenever property has been stolen or embezzled, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Same.

SEC. 632. No search-warrant shall be issued but upon probable cause, supported by affidavit naming or describing the person, and particularly describing the property and place to be searched.

Same.

SEC. 633. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Depositions.

SEC. 634. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

Search-warrant, when and how issued.

SEC. 635. If the magistrate be satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search-warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

Form of.

SEC. 636. The warrant shall be in substantially the following form: "County of _____. The people of the United States of the territory of Nevada, to any sheriff, constable, marshal, or policeman in the county of _____. Proof by affidavit having been this day made before me by [naming every person whose affidavit has been taken] that [stating the grounds of the application according to section six hundred and thirty-two, or if the affidavit be not positive that there is probable cause for believing that, stating the ground of the application in the same manner] you are thereupon commanded in the day-time (or at any time of the day or night, as the case may be), according to section six hundred and forty-two, to make immediate search on the person of C. D. (or in the house situated _____ describing it, or any other place to be searched, with reasonable particularity, as the case may be) for the following property [describing it with reasonable par-

ticularity], and if you find the same, or any part thereof, to bring it forthwith before me at [stating the place]. Given under my hand, and dated this _____ day of _____, A. D. 18—. E. F., justice of the peace (or as the case may be)."

SEC. 637. A search-warrant may, in all cases, be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer, on his requiring it, he being present and acting in its execution. How served.

SEC. 638. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance. Same.

SEC. 639. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of his warrant, is detained therein, or when necessary for his own liberation. Same.

SEC. 640. The magistrate must insert a direction in the warrant that it be served in the day-time, unless the affidavits be positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night. Same.

SEC. 641. A search-warrant must be executed and returned to the magistrate who issued it within five days after its date, and if in any other county, within thirty days; after the expiration of these times, respectively, the warrant shall, unless executed, be void. When to be executed and returned.

SEC. 642. When the officer shall have taken any property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he shall leave it in the place where he found the property. Property taken to be receipted for.

SEC. 643. When the property is delivered to the magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in sections five hundred and ninety-one to five hundred and ninety-five, both inclusive. Property, how disposed of.

SEC. 644. The officer shall forthwith return the warrant to the magistrate, and at the same time deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant." Inventory of

SEC. 645. The magistrate shall thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant. Same.

Testimony,
when taken.

SEC. 646. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto.

How taken.

SEC. 647. The testimony given by each witness must be reduced to writing, and certified by the magistrate.

When prop-
erty to be
restored.

SEC. 648. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken.

Papers to be
returned to
court of
sessions.

SEC. 649. The magistrate shall annex together the depositions, the search-warrant and return, and the inventory, and return them to the next term of the court, having power to inquire into the offenses, in respect to which the search-warrant was issued, at or before its opening on the first day.

Maliciously
obtaining
warrant.

SEC. 650. Whoever shall maliciously and without probable cause procure a search-warrant to be issued and executed, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding five thousand dollars, or imprisonment not exceeding six months.

Officer
exceeding
authority.

SEC. 651. A peace officer who, in executing a search-warrant, shall willfully exceed his authority, or exercise it with unnecessary severity, shall be deemed guilty of a misdemeanor, and punished as in the next preceding section is provided.

Defendant
may be
searched.

SEC. 652. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or the order of the court in which the defendant may be tried.

2. *Proceedings against Fugitives from Justice.*

Fugitives
to be de-
livered up.

SEC. 653. A person charged in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice, and be found in this territory, shall, on demand of the executive authority of the state or territory from which he fled, be delivered up by the governor of this territory, to be removed to the state or territory having jurisdiction of the crime.

How ap-
prehended.

SEC. 654. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice, and be found in this territory.

Proceedings
for arrest
and commit-
ment.

SEC. 655. The proceedings for the arrest and commitment of the person charged, shall be in all respects similar to those provided in this act for the arrest and commitment of a person charged with a public offense committed within this territory, except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the state or terri-

tory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

SEC. 656. If, from the examination, it appear that the person charged has committed treason, felony, or other crime charged, the magistrate, by warrant reciting the accusation, shall commit him to the proper custody within his county, for a time to be specified in the warrant, which the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this territory, on the requisition of the executive authority of the state or territory in which he committed the offense, unless he give bail as provided in the next section, or until he be legally discharged. Same.

SEC. 657. The magistrate may admit the person arrested to bail by recognizance with sufficient securities, and in such sum as he may deem proper, for his appearance before him at a time specified in the recognizance, and for his surrender to be arrested upon the warrant of the governor of this territory. Bail.

SEC. 658. Immediately upon the arrest of the person charged, the magistrate shall give notice to the district attorney of the district of the name of the person and the cause of the arrest. District attorney to be notified.

SEC. 659. The district attorney shall immediately thereafter give notice to the executive authority of the state or territory, or to the prosecuting attorney, or presiding judge of the criminal court of the city or county, within the state or territory having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged. Notice to authority of state having jurisdiction.

SEC. 660. The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or recognizance, he be arrested under the warrant of the governor of this territory. In certain event to be discharged.

SEC. 661. The magistrate shall make return of his proceedings to the next district court of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time of his arrest have not elapsed, the court may discharge him from detention, or may order his recognizance of bail to be canceled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself, within a time to be specified in the recognizance. Return of proceedings to court of sessions.

3. *Compromising Offenses.*

SEC. 662. When a defendant is held to answer on a charge of a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed—First. By or upon an officer of justice, while in the execution of the duties of his office. Second. Riotously. Third. With an intent to commit a felony. What offenses to be compromised.

Manner of
compromis-
ing.

SEC. 663. If the party injured appear before the court to which the depositions are required to be returned at any time before trial, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but, in such case, the reasons for the order must be set forth therein, and entered on the minutes.

Bar to future
prosecution.

SEC. 664. The order authorized by the last section shall be a bar to another prosecution for the same offense.

Offenses
cannot be
compromis'd

SEC. 665. No public offense shall be compromised, nor shall any proceeding for the prosecution or punishment thereof, upon a compromise be stayed, except as provided in this act.

4. *Fines and Forfeitures.*

Applied to
payment of
costs.

SEC. 666. All fines and forfeitures collected in any court of this territory, shall be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred, and after such costs are paid the residue shall be paid to the county treasurer of the county in which the court is held.

Penalty on
officer not
paying over.

SEC. 667. If any clerk, justice of the peace, sheriff, constable or other officer, who may receive any fine or forfeiture, shall refuse or neglect to pay over the same according to law, and within thirty days after the receipt thereof, he shall be liable upon his official bond for the amount thereof, with fifty per cent. damages and interest, to be recovered in like manner as for failing to pay over money received on execution, and shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum not exceeding five hundred dollars, or by imprisonment not exceeding three months.

VIII.—PROMISCUOUS PROVISIONS.

Oath.

SEC. 668. The term "oath," when used in this act, shall be deemed to include an affirmation.

Signature.

SEC. 669. When a signature of a person is required by this act, the mark of the person, if he cannot write, shall be deemed sufficient, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

Order for
transfer of
prisoners
from county
to county.

SEC. 670. When it is necessary for any purpose to have a person who is in prison in any part of the territory, brought before a court of criminal jurisdiction, an order for that purpose may be made by the court, and the order shall be executed by the sheriff of the county where it is made.

Process.

SEC. 671. Process issued by a court or magistrate shall be executed according to its terms.

Magistrate.

SEC. 672. The term "magistrate," when used in this act, signifies any one of the officers mentioned in section one hundred and two.

SEC. 673. The term "peace officer," when used in this act, Peace officers signifies any one of the officers mentioned in section one hundred and nine.

SEC. 674. The fees allowed to justices of the peace, and Fees allowed other officers having the jurisdiction and authority of justices of the peace, clerks, peace officers and district attorneys, shall, when the defendant is convicted, be considered and recovered against him as costs in the suit, and be collected in like manner as costs in civil cases.

SEC. 675. In every case where a criminal action may have Costs in been or shall be removed before trial, the costs accruing upon action re- such removal and trial shall be a charge against the county in moved before which the cause of indictment occurred. trial.

SEC. 676. The clerk of the county to which such action is Clerk to or may be removed, shall certify the amount of said costs to certify ac- the auditor of his county, which shall be examined, allowed count. and paid as other county charges.

SEC. 677. That the superseding of any law creating a crim- Repeal of inal offense, shall not be held to constitute a bar to the indict- criminal law, ment and punishment of a crime already committed, or to bar effect of. the trial and punishment of a crime where an indictment has been already found, in violation of the law so superseded, unless the intention to bar such indictment and punishment, or trial and punishment where an indictment has been already found, is expressly declared in the superseding act.

SEC. 678. This act shall take effect from and after its passage.

RESOLUTIONS.

JOINT AND CONCURRENT RESOLUTIONS.

No. I.—*Joint Resolution, establishing an Enacting Clause for all future Acts of the Legislative Assembly of the Territory of Nevada.*

[Approved November 5, 1861.]

Be it resolved, by the House of Representatives and Council of the Legislative Assembly of the Territory of Nevada:

That the enacting clause of all acts shall be as follows:

Be it enacted, by the governor and legislative assembly of the territory of Nevada, as follows.

No. II.—*Joint Resolution, relative to Boundary Commissioners.*

[Approved November 9, 1861.]

Be it resolved, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

THAT WHEREAS, The organic act of this territory provides for an act of the legislature of California, fixing the boundary between this territory and that state, on the summit of the Sierras; *and whereas*, the mutual interests of Nevada and California require immediate action on the subject; wherefore—

Resolved, That a board of two commissioners be elected by this legislature, to proceed, together with the governor of this territory, to California, at an early day after the meeting of the next legislature of that state, for the purpose of representing to that body the reasons why action should be taken on the

subject, and to solicit from them favorable action in the premises.

Resolved, That the house of representatives and council meet in joint convention on Saturday, the sixteenth day of November, A. D. eighteen hundred and sixty-one, at eleven o'clock, for the purpose of electing such commissioners.

No. III.—*Memorial to Congress, relative to Ex-Judge Cradlebaugh's Salary as Associate Justice.*

[Approved November 21, 1861.]

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the governor and legislative assembly of the territory of Nevada, respectfully represent that the honorable John Cradlebaugh, late one of the associate justices of the territory of Utah, was assigned to, and officiated as district judge in that part of the territory of Utah which now comprises the territory of Nevada, from the year eighteen hundred and fifty-nine (1859) until the creation of the territory of Nevada.

Your memorialists further represent that the labor to be performed by said official was of great importance, and required almost the entire time and attention of the judge, and that he was faithful and diligent in the discharge of the duties of the office.

Your memorialists are advised that no payment of salary has been made to said official since the year eighteen hundred and fifty-nine (1859).

Your memorialists, therefore, respectfully ask that, by suitable congressional enactment, said John Cradlebaugh be paid, from the treasury of the United States, the amount of salary remaining due.

No. IV.—*Joint Resolution, concerning the Retirement of Lieutenant-General Scott from Active Service in the Army.*

[Approved November 25, 1861.]

Be it resolved, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

That we have learned with regret that the infirmities of age, and the effects of wounds long since honorably received in the defense of his country, have induced that veteran, General Winfield Scott, to ask and accept his retirement from the active command of the armies of our country, now confronting traitors in the field.

That in the voluntary resignation of his high position at that advanced age, whereat men in general are extremely anxious to retain all the honors pertaining to their positions, we recognize that power of mind that only attaches to superior wisdom and elevated patriotism.

That the life-long services, the distinguished successes, and the unblemished patriotism of that great general and exemplary man, have endeared him to every true American heart, and entitled him to the gratitude and reverence of all who can appreciate the inestimable blessings which spring from a character so high, actions so great, and a love of country so pure as his.

That our love, gratitude, and veneration, will follow him into his retirement, and embalm him in our memories forever.

That he has rendered his name immortal, and achieved a place in history second to none who have aided in founding or upholding our republican form of government.

That in his example we shall look for a stimulus of that high character, honorable ambition, and undying love of country, which alone can uphold our national greatness, and preserve the liberty, the prosperity, and the happiness of our people.

That we hereby respectfully tender our heartfelt thanks to General Scott, in token of our appreciation of his virtues, and of our sense of the obligations which he has imposed upon his government, and upon his countrymen everywhere.

No. V.—*The Union Joint Resolutions.*

[Approved November 25, 1861.]

Be it resolved, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:

THAT WHEREAS, The peace and harmony of our beloved Union, after years of prosperity unprecedented in the annals of national history, have been suddenly disturbed, and revolutionary theories destructive of all constitutional liberty heretofore unthought of are now unblushingly announced and advocated; and, *whereas*, the first legislative assembly ever convened within this territory, which owes so much to the fostering care of our maternal government, is now in session; therefore,

Resolved, That the legislative assembly fully concur in the just and patriotic sentiments so eloquently expressed by the governor in his message, and that we earnestly sympathize with and cordially and heartily approve the national administration in its efforts to maintain the integrity of the government and the perpetuity of the Union.

Resolved, That we deem a full, fair and candid expression of our sentiments as not only highly proper, but also demanded by the exigences of the times.

Resolved, That the people of the United States owe paramount allegiance to the national, and a subordinate allegiance to their state governments.

Resolved, That the present efforts of traitors and rebels to demolish the government and to sever the union of the states, is a lamentable illustration of the fruits of reckless ambition, and the insane folly that would carry us back to barbarism for the sake of retaining in rebel hands the spoils of office, and the brief prerogatives of power.

Resolved, That the doctrine that a majority should rule is the only one upon which a revolution can be avoided after the recurrence of each election, and that it is safer to trust to the intelligence of an educated community of voters than to force of arms.

Resolved, That this government was formed for the purpose of a more perfect union, and declared to be so formed by the people of the United States, and, therefore, that the doctrine that a state may secede from the same is not only vitally at war with the principles upon which it was founded, but also a dangerous heresy.

Resolved, That the formidable rebellion which now seeks to destroy the best political system on earth, has no terrors for the loyal and true citizen; that the government whose infancy has been nursed in the tempest, and rocked by the whirlwinds of

national strife, and whose young vigor and mature strength has thus far been more than a match for its enemies at home and abroad, is not destined to expire ingloriously at the hands of rebels and traitors.

Resolved, That the readiness with which the people have everywhere responded to the call of the government, and the alacrity with which men and money have been furnished for the impending struggle, give cheering promise of future victory and final triumph.

Resolved, That the territory of Nevada sends greeting to her sister territories and the whole family of states, and pledges the strength of her mountains, the wealth of her mines, the unswerving loyalty of the popular heart, and the intense energy of her people, to the service of our common country in its present hour of trial.

Resolved, That our delegate to congress, Hon. John Cradlebaugh, is hereby requested to present the foregoing resolutions to the president, and that he have full authority at all times to pledge Nevada Territory for her full share in the existing struggle, for the perpetuity of the Union, and the integrity of the government.

No. VI.—*Concurrent Resolution relative to Distributing Post Office at Carson City.*

Resolved, by the House, the Council concurring:—

That the Hon. John Cradlebaugh, delegate to congress from Nevada Territory, be requested to use every effort in his power for the procurement of the location of a general distributing post office at Carson City, so that all mail matter from the Atlantic will be distributed at Carson City, instead of Sacramento, California, as now provided by law of Congress.

TERRITORY OF NEVADA, }
House of Representatives, Nov. 29, 1861. }

The foregoing resolution was duly passed.

WM. MARTIN GILLESPIE, *Clerk.*

TERRITORY OF NEVADA, }
In Council, November 29, 1861. }

The foregoing resolution was duly passed.

H. SMEATHMAN, *Secretary.*

No. VII.—*Concurrent Resolution adopting Message to be sent to the President of the United States, by Telegraph, on completion of the Overland Telegraph.*

[Reported from a Joint Committee, consisting on the part of the Council, of Thomas Hannah and Wm. M. Stewart, and on the part of the House, of Wm. P. Harrington Jr. and Samuel Youngs.]

Resolved, by the Council, the House concurring:—

WHEREAS, The privilege of forwarding the first telegraphic communication across the continent has been given to the legislative assembly of Nevada Territory; therefore, be it

Resolved, That the said communication shall consist of the following language viz.:

“Nevada Territory, through her First Legislative Assembly, to the President and People of the United States, Greeting:

Nevada, for the Union ever true and loyal. The last born of the nation will be the last to desert the flag. Our aid, to the extent of our ability, can be relied upon to crush rebellion.”

The foregoing was duly passed.

TERRITORY OF NEVADA, }
In Council, October 23, 1861. }

H. SMEATHMAN, *Secretary.*

The foregoing was duly passed.

TERRITORY OF NEVADA, }
House of Representatives, Oct. 23, 1861. }

WM. MARTIN GILLESPIE, *Clerk.*

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